

974  
No. 2664

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Plaintiff in Error,  
VS.

SARAH J. IRVING,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of the  
Eastern District of Washington, Northern Division.

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Filed

NOV 1 - 1915



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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**Names and Addresses of Attorneys of Record.**

DANSON, WILLIAMS & DANSON, Paulsen Building,  
Spokane, Washington,

Attorneys for Plaintiff and Defendant in  
Error,

and

GEORGE W. KORTE, Esquire, 608 White Building,  
Seattle, Washington, and

CULLEN, LEE & MATTHEWS, Hyde Building,  
Spokane, Washington,

Attorneys for Defendant and Plaintiff in  
Error. [2\*]

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*In the Superior Court of the State of Washington,  
in and for the County of Spokane.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Petition for Removal.**

The petition of the above-named defendant, Chicago, Milwaukee & St. Paul Railway Company, a corporation, respectfully shows unto the court:

That your petitioner herein, said Chicago, Milwaukee & St. Paul Railway Company, was, at the time of the commencement of said suit and still is,

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\*Page-number appearing at foot of page of certified Transcript of Record.

a citizen and resident corporation of the State of Wisconsin, and was then, and still is, a corporation duly formed, created and organized under and by virtue of the laws of the State of Wisconsin; that its principal place of business is the City of Milwaukee in said State of Wisconsin; that the plaintiff, Sarah J. Irving, was, at the time of the commencement of said suit, and still is, a resident and citizen of the State of Washington; that the above-entitled suit is brought by said plaintiff to recover of said petitioner the sum of ten thousand dollars (\$10,000.00), as damages alleged to have been caused by said petitioner by reason of negligence in the operation of its railroad; that said suit is wholly of a civil nature; that there is a controversy in said suit which is wholly between citizens of different states and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum or value of three thousand dollars (\$3,000.00), all of which will more fully appear by the complaint in said suit, which is hereby referred to and made a part hereof; that your petitioner disputes said claim and denies all liability thereon; that the time within which your petitioner is required by the laws of the State of Washington and [3] the rules and practice of said court to answer and plead in said suit has not yet expired; that your petitioner desires to remove this suit before the trial thereof into the District Court of the United States for the proper district, and your petitioner offers and files herewith a bond with good and sufficient surety for its entering in said District Court within thirty days

from the date of the filing of this petition, a certified copy of the record of this suit and for its paying all costs that may be awarded by said District Court if said District Court shall hold that this suit has been improperly removed thereto.

WHEREFORE, your petitioner prays that said surety bond may be approved and accepted and that an order be entered removing said cause to the District Court of the United States for the Eastern District of Washington, Northern Division, and that your petitioner be required to enter and file a certified copy of the record herein in said District Court of the United States as provided by law, and that this court proceed no further in said cause.

(Signed) GEO. W. KORTE,

CULLEN, LEE & MATTHEWS,

Attorneys for Defendant.

State of Washington,  
County of King,—ss.

George W. Korte, being first duly sworn, on oath says: That he is the attorney for the petitioner, the Chicago, Milwaukee & St. Paul Railway Company, in the foregoing action; that he is authorized to make and execute this petition and does so on behalf of said petitioner; that he has read the foregoing petition, knows the contents thereof, and that the statements and allegations therein contained are true.

(Signed) GEO. W. KORTE. [4]

4      *Chicago, Milwaukee & St. Paul Ry. Co.*

Subscribed and sworn to before me this 11th day of November, A. D. 1914.

[Seal]                      (Signed) F. M. BARKWILL,  
Notary Public in and for the State of Washington,  
Residing in Seattle, Wash.

[Endorsements]: Petition for Removal. A true copy of the within Petition for Removal received and due service of same acknowledged this 13th day of November, A. D. 1914. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, as a part of the Transcript on Removal, November 23, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [5]

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*In the Superior Court of the State of Washington,  
in and for the County of Spokane.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Notice of Petition for Removal.**

To the Above-named Plaintiff, Sarah J. Irving, and  
to Danson, Williams & Danson, Her Attorneys,  
Spokane, Washington:

You and each of you are hereby notified that the defendant, the Chicago, Milwaukee & St. Paul Railway Company, a corporation, will, on the 20th day of November, A. D. 1914, file in the above-named

court its petition for the removal of said cause to the District Court of the United States for the Eastern District of Washington, Northern Division, sitting in the City of Spokane, Washington, and that it will, at the same time, make and file therewith a bond, with good and sufficient surety, for the entering in such District Court, within thirty days from the filing of said petition, of a certified copy of the record in such suit and for the paying of all costs that may be awarded by said District Court, if said District Court shall hold that said suit was wrongfully or improperly removed thereto.

(Signed) GEO. W. KORTE,

CULLEN, LEE & MATTHEWS,

Attorneys for Defendant.

[Endorsements]: Notice of Petition for Removal. A true copy of the within Notice of Petition for Removal received and due service of same acknowledged this 13th day of November, A. D. 1914. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, as a part of the Transcript on Removal, November 23, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [6]

*In the Superior Court of the State of Washington,  
in and for the County of Spokane.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Bond on Removal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, the Chicago, Milwaukee & St. Paul Rail-  
way Company, a corporation, as principal, and the  
National Surety Company of New York, as surety,  
are held and firmly bound unto Sarah J. Irving, the  
plaintiff in the above-entitled action, in the penal  
sum of five hundred dollars (\$500.00), lawful money  
of the United States, to be paid to the plaintiff, her  
heirs, executors, administrators or assigns, for  
which payment well and truly to be made, we bind  
ourselves, our successors and assigns, jointly and  
severally, firmly by these presents.

Sealed with our seals and dated this 11th day of  
November, A. D. 1914.

WHEREAS the above-entitled suit was brought  
on or about the 4th day of November, 1914, in the  
Superior Court of the State of Washington, in and  
for the County of Spokane, by the said plaintiff  
against the above-named defendant, and is now  
pending in said state court, and is removable into  
the District Court of the United States for the East-

ern District of Washington, Northern Division, and the said defendant, the Chicago, Milwaukee & St. Paul Railway Company, has petitioned said court for said removal.

NOW, THEREFORE, if the said defendant, the Chicago, Milwaukee & St. Paul Railway Company, shall enter in the District Court of the United States for the Eastern District of Washington, Northern Division, within thirty days from the date of the filing of the petition for removal, a certified copy of the record in said suit, and [7] shall well and truly pay all the costs that may be awarded by said District Court, if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

(Signed) CHICAGO, MILWAUKEE & ST.  
PAUL RAILWAY COMPANY.

By GEO. W. KORTE,

Its Attorney.

NATIONAL SURETY COMPANY,

[Seal]

By FRED W. ALLEN,

Attorney in Fact.

[Endorsements]: Bond on Removal. A true copy of the within Removal Bond received and due service of same acknowledged this 13th day of November, A. D. 1914. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, as a part of the Transcript on Removal, November 23, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [8]

*In the Superior Court of the State of Washington,  
in and for the County of Spokane.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Order Removing Cause to United States District  
Court.**

Upon reading the petition and bond for the removal of the above-entitled suit into the District Court of the United States for the proper district, heretofore filed in the above-entitled court, and finding the said petition and bond sufficient in all respects as provided by laws in relation to removing causes from the state court to the District Court of the United States.

It is ordered that the said petition and bond be approved, and accepted, and that said State court proceed no further with said suit; and that said defendant, the Chicago, Milwaukee & St. Paul Railway Company, cause a certified copy of the record in said suit to be entered and filed in the District Court of the United States for the Eastern District of Washington, Northern Division, within the time provided by law.

Signed in open court this 20th day of November,  
A. D. 1914.

(Signed) WM. A. HUNEKE,  
Judge.

[Endorsements]: Order removing cause to United States District Court. Filed in the U. S. District Court for the Eastern District of Washington, as a part of the Transcript on Removal, November 23, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [9]

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*In the Superior Court of the State of Washington,  
in and for the County of Spokane.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Complaint.**

Plaintiff complains of defendant and for her cause of action alleges:

I.

That the defendant Chicago, Milwaukee & St. Paul Railway Company is now and was at all the times herein mentioned a corporation, organized under the laws of the State of Wisconsin, and was engaged in operating a railroad between Chicago, Illinois, and Seattle, Washington, and in carrying passengers for hire.

II.

That on or about March 31, 1914, this plaintiff purchased transportation for herself from said Chicago, Milwaukee & St. Paul Railway Company, from Chicago to Seattle, Washington, over the rail-

way lines so operated by the defendant and was accepted as a passenger over said line on or about March 31, 1914, and took passage as aforesaid.

### III.

That the said defendant failed and neglected to furnish a reasonably safe roadbed for the said train on which plaintiff took passage and said defendant failed and neglected in operating said train to keep a lookout for obstructions on and defects in the said tract and roadbed and failed and neglected to keep the track in good order and repair and as a result of such failure and neglect the train on which plaintiff was riding left the track and the cars contained [10] in said train and the one in which plaintiff was riding telescoped with the other cars and the said train came to a sudden and violent stop as a result of which this plaintiff was thrown violently from the place which she occupied in the said car and against other portions of the said car and plaintiff received severe, painful and permanent injuries therefrom as hereinafter alleged.

### IV.

That plaintiff's arms, back, hips, spine and shoulders were bruised, maimed and lacerated and plaintiff's vertebra and back were sprained and wrenched and her spinal cord and nervous organization were injured and plaintiff sustained a great nervous shock and since the said accident has become nervous and has been unable to sleep as a result of the injuries and at all times has suffered and will continue to suffer great pain and distress and has been unable to perform any work or labor and in the fu-

ture will be unable to perform any work or labor and the said injuries are permanent.

V.

That plaintiff has already expended and will be compelled to expend in the future the sum of \$100.00 for medicines and medical attention and plaintiff has suffered damages as a result of the injuries so received in the sum of \$10,000.00.

WHEREFORE, plaintiff prays judgment against the defendant Chicago, Milwaukee & St. Paul Railway Company, in the sum of \$10,000.00, and for her costs and disbursements herein.

(Signed) DANSON, WILLIAMS & DAN-  
SON,

Attorneys for Plaintiff.

State of Washington,  
County of Spokane,—ss.

Sarah J. Irving, being first duly sworn, on oath deposes and says: That she is the plaintiff in the above-entitled action; [11] that she has read the above complaint, knows the contents thereof, and believes the same to be true.

(Signed) SARAH J. IRVING.

Subscribed and sworn to before me this 2d day of November, 1914.

(Signed) FRED H. WITT,  
Notary Public in and for the State of Washington,  
Residing at Spokane, Wash.

[Endorsements]: Complaint. Filed in the U. S. District Court for the Eastern District of Washing-

ton, as a part of the Transcript on Removal, November 23, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [12]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Answer.**

Defendant makes the following answer to plaintiff's complaint:

I.

Answering paragraph one, defendant admits the allegations, matters and things therein contained.

II.

Answering paragraph two, defendant denies that it has sufficient information to form a belief, therefore denies each and every allegation, matter and thing therein contained.

III.

Answering paragraph three, except as hereinafter admitted, defendant denies each and every allegation, matter and thing therein contained.

IV.

Answering paragraph four, defendant denies that

it has sufficient information to form a belief, therefore denies each and every allegation, matter and thing therein contained.

V.

Answering paragraph five, defendant denies that plaintiff has suffered damages as the result of the injuries so received in the sum of \$10,000, or in any sum whatever.

Defendant denies that it has sufficient information to form [13] a belief, therefore denies that plaintiff has expended, and will be compelled to expend in the future, the sum of \$100, or any sum whatever.

For a separate, affirmative answer and by way of defense, defendant alleges:

I.

That if the train referred to in plaintiff's complaint was derailed at the time and place referred to in paragraph three of plaintiff's complaint, that such derailment, if any, was due solely and exclusively to causes and conditions over which defendant had no control whatsoever, and concerning which causes and conditions this defendant had no knowledge whatsoever in time to take any precautions, or to in anywise guard against said derailment.

II.

That if plaintiff was injured at all, at said time and place, that said injuries, if any, were the result of causes and conditions over which this defendant had no control, nor concerning which this defendant had any knowledge whatsoever in time to have taken any precautions, or to have in any wise guarded against the occurrence of the same.

Dated this 18th day of January, 1915.

(Signed) GEO. W. KORTE,  
CULLEN, LEE & MATTHEWS,  
Attorneys for Defendant.

State of Washington,  
County of Spokane,—ss.

W. J. Matthews, being first duly sworn, on his oath states: That he is one of the attorneys for the defendant and makes this verification for and on its behalf; that there is no other officer or agent of the company a resident of the said county cognizant of the facts [14] herein; that he has read the foregoing Answer, knows the contents thereof, and the same is true as he verily believes.

(Signed) W. J. MATTHEWS.

Subscribed and sworn to before me this 19th day of January, 1915.

[Seal] (Signed) B. A. HOFFINE,  
Notary Public in and for the State of Washington,  
Residing at Spokane, Wash.

[Endorsements]: Answer. Service of the within Answer is hereby admitted this 18th day of January, 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, March 2, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [15]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Reply.**

Comes now the plaintiff and for reply to the answer herein:

I. Denies each and every allegation, matter and thing in paragraphs I to II of the separate and affirmative answer and defense of defendant.

WHEREFORE plaintiff prays judgment as in her complaint.

(Signed) DANSON, WILLIAMS & DANSON,  
Attorneys for Plaintiff.

State of Washington,  
County of Spokane,—ss.

Sarah J. Irving, being first duly sworn, on her oath says: That she is the plaintiff above named; that she has read the above reply, knows the contents thereof, and the allegations therein contained are true as she verily believes.

(Signed) SARAH J. IRVING.

16     *Chicago, Milwaukee & St. Paul Ry. Co.*

Subscribed and sworn to before me this 25th day of January, 1915.

[Seal]            (Signed) JAS. A. WILLIAMS,  
Notary Public in and for the State of Washington,  
Residing at Spokane, Wash.

[Endorsements]: Reply. Received a copy of the within Reply at Spokane, Wash., this 26th day of January, 1915. (Signed) Cullen, Lee & Matthews, Attorneys for Defendant. Filed in the U. S. District Court for the Eastern District of Washington, January 26, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [16]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Verdict.**

We, the jury in the above-entitled cause, find for the plaintiff, and fix the amount of recovery at fifteen hundred dollars (\$1,500.00).

(Signed) J. M. GRIFFITH,  
Foreman.

[Endorsements]: Verdict. Filed April 28, 1915.  
W. H. Hare, Clerk. [17]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Judgment.**

This cause coming on regularly for trial before the undersigned Judge of the above court on April 27, 1915, plaintiff, Sarah J. Irving, appearing in person and by Messrs. Danson, Williams & Danson, her attorneys, and the defendant appearing by its attorneys, Messrs. Cullen, Lee & Matthews and George W. Korte, and the parties having announced that they were ready for trial, thereupon a jury was regularly impaneled and sworn to try the case and plaintiff and defendant produced their evidence and rested; whereupon the case was argued by the respective counsel to the jury and the jury was instructed and admonished and retired to the chamber to consider their verdict, and on April 28th, 1915, returned into court with a verdict in favor of plaintiff and against defendant in the sum of \$1,500.00;

Now, therefore, it is ordered, considered and adjudged that plaintiff, Sarah J. Irving, do have and

recover of and from defendant, Chicago, Milwaukee & St. Paul Railway Company, a corporation, the sum of \$1,500.00, with interest from this date at 6% per annum and plaintiff's costs taxed by the clerk of this court at \$1.85, and that execution issue therefor.

Done in open court this 21st day of June, 1915.

(Signed)     FRANK H. RUDKIN,

Judge.

[Endorsements]: Judgment. Filed in the U. S. District Court for the Eastern District of Washington, June 22, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [18]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Exceptions to Charge to Jury.**

Pursuant to stipulation of the parties to the above-entitled cause, made in open court at the close of trial of said cause, and with the consent and approval of the Court, defendant takes, makes and files exception to the portions of the charge of the Court to the jury hereinafter specified, said exception, under said stip-

ulation, to be considered in all ways as though the same had been made a part of the record of said trial at the time of the retiring of the jury to consider said cause, to wit:

Defendant excepts to the following language and portion of said charge:

“In other words, gentlemen of the jury, taking into consideration all of the testimony introduced before you and presumptions of fact to which I have referred, if you can say that you are satisfied from a preponderance of the testimony here that the defendant company was negligent, the plaintiff is entitled to recover; but if the jury is not satisfied of that fact by the preponderance of the testimony, your verdict must be for the defendant.”

Respectfully submitted,

(Signed) GEO. W. KORTE,

CULLEN, LEE & MATTHEWS,

Attorneys for Defendant.

[Endorsements]: Exceptions. Filed in the U. S. District Court for the Eastern District of Washington, May 17, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [19]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Petition for New Trial.**

Comes now the defendant in the above-entitled cause and petitions the Court for a new trial of said cause, upon the following grounds:

1. Insufficiency of the evidence to justify the verdict, and that the same is against the law.
2. Errors of law occurring at the trial.

This application is made upon the files and records in said case, and the minutes of the court.

The particulars in which the evidence is insufficient to support the verdict are, among others, as follows:

That the presumption of negligence arising by reason of the fact that plaintiff was a passenger upon defendant's train and was injured by reason of a derailment of the train is wholly overcome by the evidence of defendant to the effect that said derailment was caused by the act of a person or persons not in the employ of the defendant, but trespassers upon the premises of the defendant, for whose acts the defendant is in nowise responsible, and that

plaintiff's injury was in nowise the result of negligence on the part of the defendant. That the plaintiff having offered no evidence proving or tending to prove negligence on the part of the defendant, and the defendant having shown by undisputed evidence that said derailment was not caused by the negligence of the defendant, said presumption [20] of negligence is entirely overcome, and is without force and effect; there is no issue to go to the jury or evidence to support the verdict.

The Court erred in overruling defendant's motion for a directed verdict, and in submitting said cause to the jury.

The Court further erred in charging the jury in the particulars set forth in defendant's exceptions to said charge.

Dated this 17th day of May, 1915.

(Signed) GEO. W. KORTE,

CULLEN, LEE & MATTHEWS,

Attorneys for Defendant.

[Endorsements]: Petition for New Trial. Service of above Petition for New Trial is hereby admitted this 18th day of May, 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, May 18, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [21]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

AND AFTERWARD, on the 21st day of June, 1915, the same being the forty-ninth day of the regular April, 1915, term of said court, court met pursuant to adjournment. PRESENT: Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington. Among the proceedings had were the following, to wit:

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Order Denying Motion for a New Trial.**

This cause came on regularly for hearing upon motion for a new trial; after hearing argument by counsel for plaintiff as well as counsel for the defendant, the Court denied the motion for a new trial, and ordered that judgment be entered upon the verdict, and that defendant be allowed thirty days to prepare its bill of exceptions.

(Entered in District Court Law Journal 5, at page 317.)    [22]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Stipulation Extending Time for Filing Bill of  
Exceptions.**

It is hereby stipulated by and between the plaintiff and the defendant herein, that the defendant may have sixty days from the 22d day of June, 1915, within which to file and serve its Bill of Exceptions herein.

Dated this 20th day of July, A. D. 1915.

(Signed) DANSON, WILLIAMS & DANSON,  
Attorneys for Plaintiff.

GEO. W. KORTE,  
CULLEN, LEE & MATTHEWS,  
Attorneys for Defendant.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington, July 20, 1915. W. H. Hare, Clerk. [23]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Order Extending Time for Filing Bill of Exceptions.**

This matter coming on to be heard on the motion of the defendant, for an order extending the time within which to file and serve its Bill of Exceptions in the above-entitled case sixty days from the 22d day of June, 1915, and the Court having read the stipulation of the parties, and being fully advised in the premises,

It is ordered that the time within which to file and serve a Bill of Exceptions may be, and it is hereby extended sixty days from the 22d day of June, 1915.

Done in open court this 20th day of July, 1915.

(Signed) FRANK H. RUDKIN,

Judge.

[Endorsements]: Order. Filed in the U. S. District Court for the Eastern District of Washington, July 20, 1915. W. H. Hare, Clerk. [24]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Stipulation Extending Time for Filing Bill of Ex-  
ceptions.**

It is hereby stipulated by and between the plain-  
tiff and the defendant herein, that the defendant  
may have to and including the 31st day of August,  
1915, within which to file, serve and have certified  
its Bill of Exceptions herein.

Dated this 28th day of August, A. D. 1915.

(Signed) DANSON, WILLIAMS & DAN-  
SON,

Attorneys for Plaintiff.

GEO. W. KORTE,

CULLEN, LEE & MATTHEWS,

Attorneys for Defendant.

[Endorsements]: Stipulation. Filed in the U.  
S. District Court for the Eastern District of Wash-  
ington, August 30, 1915. W. H. Hare, Clerk. By  
S. M. Russell, Deputy. [25]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Order Extending Time for Filing Bill of Exceptions.**

This matter coming on to be heard on the motion of the defendant for an order extending the time within which to file, serve and have certified its Bill of Exception in the above-entitled case, and the Court having read the stipulation of the parties, and being fully advised in the premises,

It is ordered that the time within which to file and serve a Bill of Exceptions, may be, and it is hereby extended to the 31st day of August, 1915.

Done in open court this 30th day of August, 1915.

(Signed) FRANK H. RUDKIN,

Judge.

[Endorsements]: Order. Filed in the U. S. District Court for the Eastern District of Washington, August 30, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [26]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Bill of Exceptions.**

BE IT REMEMBERED, That the above-entitled cause came on regularly for hearing in the above-entitled court, on the 27th day of April, 1915, at 10 o'clock A. M., before the Honorable FRANK H. RUDKIN, Judge presiding, the plaintiff appearing in person and by her attorneys, Danson, Williams & Danson, and the defendant appearing by its attorneys, Geo. W. Korte and Cullen, Lee & Matthews, and a jury having been duly impaneled and sworn to try the cause,

WHEREUPON, the following proceedings were had and done, to wit:

Mr. Williams made an opening statement on behalf of the plaintiff and thereafter the plaintiff introduced the following testimony:

**[Testimony of Sarah J. Irving, for Plaintiff.]**

Mrs. SARAH J. IRVING, the plaintiff, was called as a witness in her own behalf, and having been sworn, testified on direct examination by Mr. Williams as follows:

My name is Sarah J. Irving, fifty-one years old, and live in Spokane. On the 21st day of March, 1914, I left Chicago for Vancouver, B. C., having purchased transportation over the Chicago and Milwaukee Railroad. I boarded the passenger train at 10:15 o'clock on the evening of that day in Chicago, at the Union Depot in Chicago. The train left Chicago at about 10:15 that evening. Q. Did any wreck occur on that train? A. Yes, just after we—well, we were not out of Chicago when there was an awful noise, you know. [27] Q. About how long were you out, about what time were you out from the station before the wreck occurred? A. Well, I can't quite say, but I don't think it was more than twenty minutes, fifteen or twenty minutes. Q. You say it was still in the city? A. Yes, just getting out of the city. At the time of the wreck I was in the toilet-room, ladies' toilet-room, washing, just getting ready to go to bed, and all at once there was an awful noise and the train was thrown back and forwards. I left the train after everybody got out. Everybody, of course, hurried out of the train; I couldn't get out because they were all in the passage way. As soon as I could get out I went out. I was the last one to come out of the train, and I sat down on the lower step, the step

(Testimony of Sarah J. Irving.)

nearest the engine, the front step, it would be. That was not still on the track. The rear part of the coach was on the track. The car that I was in was a tourist car. There was a baggage-coach and a day coach and the engine only ahead of us.

After I got out of the train I could see the engine lying over on the side of the track. Q. What way was the engine pointed at that time with reference to being across the track or down off the grade? A. It was down this way. Our track was here, was on this side of engine, was here on this side, on the inside line, on the inside rail. I think the engine was over two tracks. I only counted three tracks at that place. I don't know how many they would have. Our train was on the outside track, on the right side going out of Chicago, and the engine was pointed to the left, toward the inside. The engine was square across the other several tracks. I did not see the baggage-car at all, it was detached from the engine, and I think it was on the other side, but I did not see it.

The COURT.—The plaintiff is not bound to account for the wreck.

Mr. WILLIAMS.—I so assume, but I wanted to explain one situation about it. [28]

Q. Did you see anything about the rails? A. Yes, I saw the rail—I saw one rail especially.

Q. What was the condition of the rail? A. It was standing up, off the ground and turned around. I did not notice anything about the ties.

(Testimony of Sarah J. Irving.)

On cross-examination by Mr. Lee, the witness Sarah J. Irving testified as follows:

Q. You didn't pay any particular attention, I take it, to the condition of the track at that time, at the time you got off the car? A. Well, I saw the rails there. Q. You observed that the front end of the tourist car, in which you were, was off the rails? A. It was off the track. Q. That is, just off slightly, was it not? A. It was half off. Q. The rear trucks of the car were on the rails? A. Yes, I think so. Q. The engine was some distance ahead, was it not, over across the bridge? A. Not at a great distance. Q. Well, two or three, or three or four car-lengths? A. Not so far as that. Q. You didn't go over to where the engine was? A. Yes, I walked up, not quite as far as the engine, I went up to where I could see it; I didn't walk very far, but it seemed like it was quite near the car I was in. Q. Quite a portion of the track that was torn up you observed was beyond where the tourist car was standing, over toward where the engine lay? A. Yes, behind the engine. Q. At the point where the car was off the track did you observe whether the rails were torn up or not? A. I saw one rail standing up. Q. And how far ahead of the tourist car was that? A. I should think the length of the rear car. Q. That was quite badly torn up, was it not? A. Yes, very badly torn up.

(Plaintiff introduced other evidence relating to

the nature and extent of her alleged injury, which is omitted from this Bill of Exceptions.)

Plaintiff rested.

Whereupon the deposition of August Hegger, witness for defendant, was read by Mr. Lee, as follows: [29]

**[Deposition of August Hegger, for Defendant.]**

August Hegger, one of said witnesses, having been duly sworn to testify to the truth, the whole truth and nothing but the truth, testified, on direct examination by Mr. Jefferson, as follows:

My name is August Hegger, forty-nine years old, live at 1747 North Kedvale Avenue, Chicago, Illinois. I am section foreman for the Chicago, Milwaukee & St. Paul Railway Company. During the month of March, 1914, my business was repairing tracks, and so on, such work, fixing bolts, and things like that. At that time I was section foreman. I have been in the railroad service since 1894. At first I was a laborer, then lamp-man, then I went back as section-man and they put me up as section foreman. I have been section foreman since 1900, working all of the time for the Chicago, Milwaukee & St. Paul Railway Company. My duties require me to tighten bolts most of the time. I am now connected with the C. & M. Division, the Chicago and Milwaukee Division, between Pacific Junction and Western Avenue, in the City of Chicago, and am in what is known as the terminal district of the Chicago, Milwaukee & St. Paul Railway Company.

It is about a mile and one-half or two miles from Pacific Junction to Western Avenue on the tracks

(Deposition of August Hegger.)

of the Chicago, Milwaukee & St. Paul Railway Company, and between those points there are four tracks all the way up from Western Avenue to Pacific Junction. The general direction of those tracks is north and south. They are numbered 1, 2, 3 and 4. They commence to number from the east. Track number 1 is the farthest track to the east, and number 4 is the farthest track to the west, My duties required me to keep tracks in repair, tighten the bolts; if anything broke, repair that again, and such work like that. Clean off the dirt and pick up the old scrap, such kind of work. I had at that time three men working under me. My duties required me to always see that the rails were kept straight and the bolts tight. It was my duty to make an inspection of the track. At that time I made an inspection of [30] these four tracks once every day, in the morning. Track number 1 is used for passenger traffic, northbound. Track number 2 was used for southbound passenger traffic, and track number 3 was used for freight going from Galewood towards Western Avenue; in other words, southbound freight traffic. Track number 4 is used for out-bound freight from Western Avenue to Galewood. In March, 1914, and previous to that time, it was a part of my duties to make a daily inspection of these tracks.

As soon as I got in in the morning to the tool-house I gave the men orders what to do, and I take what we call the northbound number 1 track going towards Western Avenue. We looked over the

(Deposition of August Hegger.)

tracks to see if the spikes are out or any bolts broken, anything like that, and if I find anything, send a man over to repair it. In other words, I start at Pacific Junction and walk south on number 1 track. We make the same inspection of the other three tracks. That inspection was done each morning in the month of March. Every morning of the year. We made that inspection on the morning of March 21st, 1914. On the morning of March 21st, 1914, I found track number 1 between Pacific Junction and Western Avenue in good condition; all bolts were in the track and all good and solid. And the spikes were on the rail, and everything. The rails used on this track are 100 pounds to the yard. The rails are bolted together with angle-bars, with nuts; and also what they call the bond wire for them signals over there, the automatic signals that show danger and safety. The rails have been attached to the ties by spikes; both sides four spikes to the tie; that is one outside and one inside, and across is four spikes. Two spikes to each rail on each tie. The ties were oak. The rails thirty-three feet long. I think there were eighteen ties to the rail. The ties are eight feet long and seven inches wide. The angle-bars were twenty-four inches long, and they have 100 pound rails, six inches high, the rail is, and then to fit that. The angle-bars were at least an [31] inch in thickness. The angle-bar has four holes, and each rail has two holes. The angle-bars are fastened to the rails by four bolts, two in each end of each rail, and the bolts are kept in

(Deposition of August Hegger.)

place by nuts. My duties on this tour of inspection, which I made daily, was to see that these nuts were in place, tightened up, and that the bolts were in place, and the angle-bars in place. The 100 per cent angle-bar is the one used in connection with the hundred pound rail. Potomac Avenue is about four or five blocks south of Pacific Junction. Yes, I remember the happening of an accident near or south of Potomac Avenue, on the night of March 21st, 1914, when train number 15 of the Chicago, Milwaukee & St. Paul Railway Company was derailed, at that point. I was at the wreck myself after it happened, but did not see the accident when it happened. I arrived an hour and one-half afterwards. When I arrived at the point of the accident, I saw Mr. Rupp, superintendent of terminals. I also saw there, Mr. Bush, assistant superintendent; and Mr. Burk, the road-master; Mr. Lemke; and this gentleman over there, I don't know his name; Mr. Hasenbalg, train-master. The rails at this point, south of Pacific Avenue, were put in between 1912 and 1913. They were put in at that time under my supervision.

On cross-examination by Mr. Long, the witness, Mr. Hegger, testified as follows:

The Chicago, Milwaukee & St. Paul trains go out of the Union Station, in Chicago, in a northerly direction, toward Pacific Junction, and come first to the Western Avenue Station. Pacific Junction is north of that. Western Avenue is about three miles from the Union Station. It is three miles,

(Deposition of August Hegger.)

maybe more, from Western Avenue to Pacific Junction, so that it is about six miles from Pacific Junction to the Union Station. This accident, on March 21st, 1914, was about five blocks south of Pacific Junction, about a mile and one-half or two miles north from Western Avenue. At the place of the accident the tracks have a kind of a curve all along the track, from Kedzie [32] Avenue on to Pacific Junction, pretty near, a kind of a curve all along. From Kedzie Avenue to Pacific Junction is about a mile and one-half a little more maybe. The track curves easterly; as the train goes northwardly on these tracks, the train heads easterly slightly. At Potomac Avenue there isn't much of a curve, a half inch. I mean half an inch elevation, I don't know what they call that curve. A half inch elevation, that is, the tracks on one side are higher than the other. I don't know what they call the curve. The westerly rail, as you go north, is about half an inch higher than the easterly rail, which was true on all of the tracks numbered one to four. The roadbed is elevated at Potomac Avenue. The roadbed is not elevated all the way from the Union Station to Pacific Junction. It is elevated from Western Avenue to Pacific Junction. My jurisdiction was from Western Avenue to Pacific Junction, during the whole of which distance there is a slight curve, as I have described. My jurisdiction extends north of Pacific Junction two blocks. The railroad is elevated I think about fourteen feet from Western Avenue to Pacific Junction. It is filled in solidly between streets. At the time of the

(Deposition of August Hegger.)

accident there were no other tracks there than these four, that I have described. There is one now. That is, within the yard limits. I don't know whether there was any watchman or lookout along these tracks at or near Potomac Avenue. During the time that I was on duty, they came around once in a while there, but not all the time. I did not see him every day, but they have been around there several times during the week. I often saw them. There is not a lookout, not a little building; nothing of that kind. There is not a switching apparatus, or anything of that kind. There was nothing to prevent the engineer or fireman on a train going north, as they approached Potomac Avenue, that would prevent them from seeing the track. I don't know the speed of the train at that point. I do not know what time this accident occurred, or how long the train had been out of the Union Station. I know [33] nothing of the accident itself. I arrived about an hour and one-half after the time I understood the accident to have taken place. It might have been longer, I don't know just exactly. The tool-house I referred to is near Pacific Junction tower-house. They have a brick tower there that throws switches. Q. Can the man in the tower-house see the tracks? A. Not as far up as there; not as far up as Potomac Avenue. That is quite a distance, and it is kind of a curve, and a lot of trees alongside there along the track. There is no tower-house or lookout of any kind near Potomac Avenue. The nearest lookout is four blocks south

(Deposition of August Hegger.)

of Pacific Junction, I mean four blocks south of Potomac Avenue. This is Kedzie Avenue. It is about two miles from Kedzie Avenue to Pacific Junction. There is no tower-house between Kedzie Avenue and Pacific Junction. There is no other kind of lookout between those points. ,

Q. Is there any obstruction to the view when you are on the track going northwardly, and before you reach, and as you approach Potomac Avenue? A. Telegraph poles; that is all there is. The track is fenced in on both sides from Kedzie Avenue to Pacific Junction. Sure, there is a way to get from the street to the elevation; they can crawl up on the wall, on that bridge wall, you know; it is laid out a little farther on the side, it is about four feet high, they can jump up, get up. From the ground to the top of the elevation the construction is cement walls where the bridges are on, the iron construction is on. The walls go down kind of slanting, and then set out a little on the bottom. The iron work of which I speak is over the street, and rests on these cement walls. One getting up on top of the elevation would simply have to scale the wall, that is fourteen feet high. To get up on top of the elevation at the street you have to go down the bank; that is, the construction is just as wide as the street is wide, that is all; the rest is gravel on the track, that is, just the wideness of the street. The street runs under the railroad. There is a cement wall on both sides up to [34] the elevation, so that at the street you would have to skin up the wall to get to

(Deposition of August Hegger.)

the top of the elevation.

The tool-house to which I referred is at Pacific Junction. I first give the directions to the three men under me at the tool-house in the morning, and then start southwardly on track number 1 to Grand Avenue, then go north on number 2 again toward Pacific Junction, then back on number 3 to Grand Avenue, and on number 4 to North Avenue. It takes me an hour and one-half or two hours to make that inspection.

Q. You do not stop to get down to look at the connection between the rail, do you, on these trips? A. Yes, sir. Q. Do you? A. Yes. Q. You stop at the end of every rail? A. Not every rail; if I see what I think is not right, I look it over, and if the track is low, I lay down and look over that, too. Q. Well, do you or not, in your inspection trips, stop at the end of every rail? A. Not every rail; I look at every joint and see if the bolts are loose and everything. Q. Do you stop as you walk down the track? A. No, not every time, stop, no. Q. That is what I mean. A. No, I don't stop after every joint. Q. How high is the rail above the cross-ties? A. Six inches. Q. Do you walk in the middle of the track on these inspection trips? A. In the middle of the track. Q. Can you see the spikes that hold the rail on the ties on the outside of the track as you walk down? A. Not all of them. Q. No? A. But I see the inside getting away. I can look on the outside if they are getting away. Q. If a spike was out on the outside of the rail you might not see

(Deposition of August Hegger.)

it when you were walking in the middle of the track?

A. I might miss one here and there, not very many.

Q. The weight of the train, or the pressure from it is from the inside out, is it not? A. Yes. If a spike was out, the train would spread the track outwardly. It might result in derailment. As to the length of time these ties have been on this track, they are always getting every year renewed, you know, when they are rotten we put another one [35] between some there may be two years, some may be four years, some may be five years or six, I don't just remember all that. When the train was derailed the cars were on the east side of track. I have a distinct recollection of walking down this track on the morning of the 21st day of March, 1914. I do not say because that was my custom. I remember that distinctly. That morning we started at seven o'clock, then I gave the men the work, and then I walked up; I don't know just what time I would get there. I think it was between seven and eight o'clock in the morning, of the 21st of March, 1914, that I walked down. I don't remember whether I stopped at Potomac Avenue that morning. I don't remember whether this track number 1 had been used by other trains frequently during the day of March 21st. On that day I did not see very many people on the track besides myself. I saw the repair men of the signal department. I did not see anybody there except the men working for the railroad in and about their work.

The engine was off the track when I arrived at the

(Deposition of August Hegger.)

scene of the accident. It was lying across the tracks, headed west. I think the next car to the engine was the baggage-car, and it was laying down the bank, east. I don't know whether it was on Potomac Avenue; it was just off the other side of the bridge, north of Potomac Avenue bridge, I mean south of Potomac Avenue, a little south of the bridge. I don't remember how far that car was from Potomac Avenue. The engine was north of Potomac Avenue on the other side of the street.

When I came there the other cars of the train were pulled out, they were gone; the wreck was pretty near cleared up; the cars were all back, only they picked that baggage-car up when I came. All of the passenger cars had been taken away when I got there, and the men were working repairing the track. I made no inspection of track number 1 after this early morning inspection of March 21st, during that day. I left my work at 5:30, and I was not back there after that time.

On redirect examination, by Mr. Jefferson, Mr. Hegger testified as follows: [36]

Between Kedzie Avenue and Pacific Junction there are semaphore signals on the right-hand side, on the east side of the track, of track number 1. These signals control the movement of trains running on track number 1. Between Kedzie Avenue and Pacific Junction there is one semaphore at Spaulding Avenue, one on Division and North Avenue, and Wabansia Avenue. The trees that I spoke of as obstructing the view, looking south from

(Deposition of August Hegger.)

Pacific Avenue toward Potomac Avenue, are not on the right-of-way of the company. There are some of them people that have yards there. They are on the east side of the street, and then some on the alleys, you know. On the morning of the 21st of March, 1914, as to whether the ties were rotten or not, they were all in good condition, so far as I know. There is now, but not at that time, a switch-track or cross-over track immediately south of Potomac Avenue Viaduct, leading from track number 1 to the other tracks. There was not any such track or cross-track within four hundred or five hundred feet south of Potomac. When I made the inspection on the morning of the accident, walking south, I observed the spikes were all in the ties, and were secured to the rails, and as to the angle-bars, the bolts were tight, and the nuts were all tight on, that is all the further I could know.

On recross-examination by Mr. Long, Mr. Hegger testified as follows:

Q. Are not the nuts on the bolts, on the angle-bars on the inside—or outside of the track? A. Well, there are two inside and two outside. Q. You could not say whether the nuts were on the bolts on the outside of the track, as you walked down the center, could you? A. No, I cannot, but I can *work* over and look at it. I can walk towards the rails so close that you can see both sides. Q. Did you walk from one side of the track to the other side, so as to look over at the outside nuts? A. Where the joints are, yes. Q. Every time? A. Where the joints are, yes.

(Deposition of August Hegger.)

Q. And those angle-bars connect at every rail, that is, there are two angle-bars? A. Yes, they run each [37] way, and there are two bolts. Q. And there is an angle-bar about every— A. About every thirty feet, maybe thirty-three feet. Q. Thirty-three feet on each side? A. Yes. Q. Did you walk over at each thirty-three feet on each side and look at the nuts on the bolts, at each place? A. Yes, sure. Q. On that morning? A. That morning, and every morning. Q. You have a recollection, do you, of having looked at the bolts on every angle-bar on both sides— A. Every morning. Q.—of the track that morning? A. Yes. Q. Do you know how far it is from Potomac Avenue to the city limits of Chicago, north? A. I do not know how far it is from the city limits of Chicago, north. I don't know just where the city limits is, north. Potomac Avenue is within the city limits, and it is considerable distance from the city limits, about five miles, I guess. Q. Is it densely settled and populated at this place? A. Well, it is building up there now, lately, now. Q. I mean, was it in 1914? A. Yes. Q. It was thickly settled? A. Yes. Q. Much traffic on the streets? A. Not there yet; there is a school down there close by.

On further examination by Mr. Jefferson, the witness testified as follows:

The public did not pass up and down these tracks as they were elevated, and the rails of this north-bound track number 1, as well as the rails of the other three tracks, were laid in "broken joints." By

(Deposition of August Hegger.)

“broken joints,” I mean that the joints of the two rails were not opposite each other, so that it was not a very difficult matter to observe these joints as you passed along, inasmuch as they did not occur at the same place in each rail.

Further examination by Mr. Long, the witness testified:

Q. Did you zigzag down the track from one side to the other as you walked southwardly on March 21st, 1914, or did you walk down the center of the track? A. Wherever the joint is, I go over [38] on that side and at the bolts right on the outside where I can see them. Q. Then you did not walk down the center of the track? A. I zigzagged on the way.

On further examination by Mr. Jefferson, the witness testified:

Q. As you walked down the track, walking diagonally from one joint on one rail to the joint on the other— A. Yes. Q. —on the morning in question, was there anything to obstruct your view from observing whether the nut-locks were off the bolts, connecting the joint of the rails; whether the nuts were on the inside or on the outside of the rails? Was there anything to obstruct your view? A. No. Q. You could see plainly? A. Plainly.

**[Deposition of A. J. Hasenbalg, for Defendant.]**

The deposition of A. J. HASENBALG, a witness on behalf of the defendant, was then read by Mr. Lee. On direct examination by Mr. Jefferson, the witness testified as follows:

(Deposition of A. J. Hasenbalg.)

My name is A. J. Hasenbalg; I am thirty-eight years old; live at 4453 Irving Park Boulevard, Chicago. My present occupation is train-master, Chicago, Milwaukee & St. Paul Railway Company. This was my occupation in March, 1914.

I recall the accident to Train Number 15 on track number one, near Potomac Avenue on the night of March 21st, 1914. I did not witness the accident. I cannot say how soon after the accident I arrived, but it was about an hour. When I arrived at the accident the rear end of the train had been taken back to Western Avenue. I observed the position of the front end of the train. My recollection of how the cars stood on the front end is about the same as that of Mr. Rupp and Mr. Bush, to which they have testified. I observed the rails on track number 1 south of Potomac Avenue. Counting the rails from the Potomac Avenue Viaduct, I observed that rail number 3 had been disjointed from rail number 4. Both angle-bars were missing. The outside spikes of the south rail were pulled for some distance back.

[39]

Mr. LONG.—I object to that statement and move to strike it out.

Mr. JEFFERSON.—Well, if he says they were missing—

Mr. LONG.—Well, he said that they were pulled.

The WITNESS.—They could not have been missing unless they were pulled.

Mr. LONG.—Well, they might be.

The WITNESS.—Well, they were missing, the

(Deposition of A. J. Hasenbalg.)

spikes on both sides of the receiving-rail were missing for about half a rail length, and the receiving-rail was shoved in.

Mr. LONG.—I object to the statement that it was shoved in, and move to strike it out.

Mr. JEFFERSON.—Go ahead.

A. Well, the receiving-rail was—I do not know how you would say that. The receiving-rail was out of line. It was in about two inches. According to my recollection, it was in about two inches, or nearly the width of the ball of the rail. The end of the receiving-rail had very deep marks where it had been struck by the flanges of the forward wheels of the engine.

A. I did not notice whether there was anything between the ends of the rails. I could not say from my recollection at this time. In looking over the ground to determine the cause of the accident, I found, among the weeds, probably three or four feet of this joint, angle-bars and bolts and spikes. At this time, I did not find anything else besides that. But later, the following morning, about daylight, looking the ground over further, I discovered a claw-bar and a track wrench, concealed on the abutment of the viaduct over Division Street. A claw-bar is an instrument used by trackmen for removing track spikes.

Mr. LONG.—I move to strike out the answer of the witness, on account of the location of the finding and the time of the finding. It is wholly irrelevant and incompetent. [40]

(Deposition of A. J. Hasenbalg.)

Mr. JEFFERSON.—Q. What did you say the claw-bar was?

A. An instrument used by trackmen to pull out spikes. A wrench is an instrument used to remove the nuts from track bolts, bolts used in fastening angle-bars, and I found these in the Division Street Viaduct, which is on top of the abutment. There is a space of about eighteen inches between the top of the abutment and the bottom of the bridge structure. I do not have any personal knowledge of those being used to remove the track or unloosen the angle-bars at the point of derailment, but the instruments I did find are those in common use by railroad trackmen to remove spikes and nuts from rails.

Those articles which I found in the weeds were found shortly after I arrived there, and they were on the east side of the east rail of track number 1, almost directly opposite the point of the derailment, or where the track was disjointed. At that time the wrecker was not working there. It had not got there yet. When the wrecking engine did come, it worked on the north side of Potomac Avenue. The articles that I found were south of Potomac Avenue, in the weeds, and about opposite the point where the rails were disjointed. I did not make any examination of the track further south, that is, track number 1. These bolts that I found did not show any evidence of having been broken off. There was nothing wrong with them; they were our standard pattern of track bolt, and such a bolt as is used to attach the angle-bar to the joint of a rail.

(Deposition of A. J. Hasenbalg.)

On cross-examination by Mr. Long, the witness, Mr. Hasenbalg, testified as follows:

I did not measure the distance between the south disjointed rail and the rail on the west side of track number 1, nor did I measure the distance between the receiving disjointed rail and the rail on the west side of track number 1.

Q. Was the tourist sleeping-car over these disjointed rails at that time? A. The tourist car had been removed before I got there. I was not there when they re-railed the tourist car. I [41] was only describing conditions which I saw to exist after the sleeping-cars had been removed, and when I arrived there. Between this tourist car, which was south of the avenue, and the engine, which was north, there were two coaches and the baggage-car down the bank. They were north of the avenue. They were north of the break in—north of Potomac Avenue, north of the break in the rail. As to their being south of Potomac Avenue, I could not say clearly, but my recollection is that one end of one of them stood in the bridge or on the bridge. There was no car on the track over Potomac Avenue, or in the street below, in Potomac Avenue.

Q. Without having made the measurements between these rails at the point where they were disjointed, I mean from the west rail to the east rail on the east track, you cannot say, can you, that the receiving-rail was in two inches, or that the south rail was out two inches? A. Yes, sir. Q. Without having made the measurements? A. Yes, sir. Q. The

(Deposition of A. J. Hasenbalg.)

spikes were out on both sides of the south rail, as I understood you? A. Yes, sir. Q. For how far?

A. The south rail. No. The outside of the south rail. Q. The outside of the south rail? A. That is

my recollection. Q. Back for how many feet? A. I could not say, positively, but for some distance.

Q. And then out on both sides of the receiving-rail?

A. Yes, sir.

I could not say how far Division Street is from the scene of the accident, exactly. I think it is a long block. It is the first viaduct east or south of Potomac Avenue. I could not say how many feet in a long block. I don't believe I could make a guess that would be anywhere near it. I do not know how the claw-bar and the track wrench came to be found there.

Q. Is there any mark, or way of identifying the claw-bars and wrenches of the Chicago, Milwaukee & St. Paul Railway Company? A. They have the initials stamped on them on the side. Q. Were these

things so stamped? A. I don't know. Q. That discovery was on the morning of the 22d of March? A.

Yes, sir. [42]

On redirect examination by Mr. Jefferson, Mr. Hasenbalg testified as follows:

Q. At about daylight? A. Yes, about that. Q. And you remained at the point of the accident all night? A. Yes, sir.

The deposition of Mr. P. L. Rupp a witness on behalf of the defendant, was read by Mr. Lee; after having been sworn, testified on direct examination by Mr. Jefferson, as follows:

**[Deposition of P. L. Rupp, for Defendant.]**

My name is P. L. Rupp, I am fifty-three years of age, and reside in Chicago. Since 1908 I have been superintendent of terminals for the Chicago, Milwaukee & St. Paul Railway Company. I have been in the railroad business for thirty-eight years. Superintendent of terminals of the Chicago, Milwaukee & St. Paul Railway Company, in the city of Chicago, includes the track from Western Avenue to a point north of Pacific Junction to the north, and Bensonville on the Council Bluffs Division, west of Pacific Junction, and that embraces track number 1 as it passes over Potomac Avenue. I remember the accident caused by the derailment of the engine and tender of train number 15 on the night of March 21st, 1914. I did not witness the accident, but I was present soon after, probably thirty or thirty-five minutes after it occurred.

I found the engine lying crossways of the four main tracks, just north of Potomac Avenue. The tank of the engine was down the embankment on the east side of track number 1, north of Potomac Avenue, upside down. The baggage-car was partly down the embankment, but not overturned, on the east side and north of Potomac Avenue. The two day coaches and the forward truck of the tourist car were off the track. The balance of the train was on the rails. When I started from my home I went direct to the coach-yard and got a switch-engine there and went to the scene of the accident, and had this switch-engine rerailed the forward truck of the

(Deposition of P. L. Rupp.)

tourist car. I took it with the other cars that were not derailed, to Western Avenue [43] coach-yard and made up the head end of the train and started that train at 12:35 A. M. By removing the pilot of the derailed engine, we cleared number 4 track. The forward trucks of the tourist car, that is, the trucks on the north end of the car, the direction in which it was going, were off the rails. The entire truck was off the rails, but the wheels were within three or four inches of the rail, so that by putting a switch-engine on the other end and using frogs we were able to draw them back on to the rails. I gave my entire time to the arranging of the new train and getting it out, in connection with clearing the track, which took until eight o'clock the next morning.

Q. Did you make any examination or observation of the rails at the point of derailment at the time?

A. I found where the joints had been opened and an angle-bar placed between those, or in this opening, which caused the derailment.

Mr. LONG.—I object to the witness' statement.

Mr. JEFFERSON.—Q. Just state what you saw, Mr. Rupp, please.

Mr. LONG.—And I move that that be stricken out.

The WITNESS.—The angle-bar in this opening, I saw that. That was about midway underneath the tourist car.

Mr. JEFFERSON.—Q. Is there anything further that you wish to enlighten us on in connection with the accident, with reference to what you saw your-

(Deposition of P. L. Rupp.)

self at that time? A. That is about all I saw as far as the track was concerned.

I saw Mr. Burke there; Mr. Burke arrived there shortly after I did. No repairs that I know of were made on the tourist car; it went on in the new train.

Mr. LONG.—That is objected to.

None of the cars had been telescoped. It was a steel train from the cow-catcher to the end of the train. [44]

On cross-examination by Mr. Long, the witness, Mr. Rupp, testified as follows:

Q. Were there any cars on the bridge across the street? A. The baggage-car evidently went across the bridge. There was not any of the cars thrown across the bridge; they were in that position when I got there. The engine was across the tracks, and the tender and baggage-car were on the side of the embankment, north of Potomac Avenue. The rest of the train was south of Potomac Avenue. There was no obstruction, or nothing to prevent the engineer and fireman from seeing the track as they approached this point.

Q. Was there anybody whose duty it was to be on the lookout as to the trains and tracks within view of this place that evening? A. We have no track-walkers at night. Q. And nobody stationed so that they could see the track? A. No, not for that purpose. Q. There is no elevated switching device,—or what do you call that? Interlocking device, that is near this point? A. There is an interlocking plant

(Deposition of P. L. Rupp.)

north of Potomac Avenue known as the Pacific Junction Interlocking Plant. That is probably half a mile, maybe not that far, from Potomac Avenue. Trains do not slow down as they approach Pacific Junction if they have their signals.

Q. You do not know, of your own knowledge, what signals, if any, were given on this occasion, do you?

A. I did not see any signals given. I arrived at the scene of the accident in the neighborhood of eleven o'clock. I got a telephone message at my residence, at number 3135 Washington Boulevard. It takes me from eight to twelve minutes, under normal conditions, to get to the coach-yard. I can walk it in seventeen minutes. I stayed at the coach-yard probably a minute or two. The coach-yard is between Western Avenue and the scene of the accident. I did not take up the wrecking derrick and apparatus of that kind; I just left there with a switch-engine, in order to get out to the ground as quickly as possible. When I arrived I presume I saw at least fifteen or twenty people [45] about the scene of the accident. They were passengers. No trackmen or employees of the railroad had arrived at that time, except the crew that I had with me, consisting of five men.

The deposition of W. C. Bush, a witness on behalf of the defendant, was then read by Mr. Lee. Having been first sworn, Mr. Bush, on direct examination by Mr. Jefferson, testified as follows:

**[Deposition of W. C. Bush, for Defendant.]**

My name is W. C. Bush, I am fifty-two years old, live at number 3223 Warren Avenue, Chicago. My present occupation is and was during the month of March, 1914, assistant superintendent of terminals in Chicago for the Chicago, Milwaukee & St. Paul Railway Company. I have been assistant superintendent of terminals for five years. Before that I was agent for the Chicago, Milwaukee & St. Paul for about twenty-seven or eight years. I was agent in the Chicago terminals five years at Galewood Transfer House. That is the Galewood that has been mentioned in this testimony, by the witnesses. As Mr. Rupp's assistant, my territory covers the same territory that he has mentioned. I recall the accident in question. I did not see the train wrecked. I arrived there about forty minutes after the accident. I saw Mr. Burke and Mr. Rupp and Mr. Hegger there. I observed the position of the cars in the train when I got there. None of the cars had been removed when I arrived there. Shortly after I got there they were. The position of the cars, as Mr. Rupp stated, would be my statement. I personally observed the rails of track number 1 south of Potomac Avenue. I made an examination immediately after I arrived at the scene of the accident.

Q. What did you notice with reference to the joint between the third and fourth rails south of Potomac Avenue, being the east rail of number 1 track? A. The receiving-rail; the angle-bars had

(Deposition of W. C. Bush.)

been removed from the receiving-rail; the spikes—

Mr. LONG.—I move to strike out that part of the answer in which the witness says that the angle-bars had been removed. [46]

Mr. JEFFERSON.—Yes, I guess that may be stricken out.

The WITNESS.—Well, the angle-bars were gone, they were not on there. The angle-bars were gone from the point. The spikes were out of the ties on the inside of the receiving-rail for six or eight ties. The receiving-rail was moved over so that the flange of the engine wheel had struck close to the outer edge of the ball of the rail, and the mark on the rail where flange had gone till it had dropped on to the ties. I then saw where the wheels had gone across the viaduct, and then the engine turned over.

Q. Did you notice anything between the south end of the receiving-rail and the north end of the first rail south of it? A. Well, I am not positive as to that. I think that the angle-bar was in there, but I do not remember. That was not clear in my mind, but the other part was. I remember the other distinctly.

As assistant superintendent of terminals, I am familiar with the movements of trains that passed over that track northbound, say from five o'clock in the afternoon until the time of the accident. Q. Well, now, what trains, if you know, passed over that track northbound between five o'clock in the afternoon and the time of the accident, what trains? (rest of question omitted.) A. C. & M. Division

(Deposition of W. C. Bush.)

Train number 9 would be the first train leaving the Union Depot at five o'clock. Q. What kind of a train was that? A. That is a passenger train. I will give the passenger trains first. We only have a couple of freight trains there; then C. & M. Division number 36, leaving there at 5:15. Then we have a Bluffs Train number 31, leaving the depot at 5:20, and number 37 leaving there at 5:25. Then C. & M. Division number 141, leaving there at 5:35, and number 143, leaving there at 5:45. Then the next train leaving there would be Bluffs number 5, leaving there at six o'clock. Bluffs Train number 11, leaving there at 6:05, and Bluffs number 39; leaving there at 6:20. Then comes C. & M. Division Train number 1, leaving there at 6:25, and C. & M. Division number 101, leaving there at 6:35. [47] That is the Pioneer Limited. Then comes C. & M. Division number 145, leaving there at 6:42. Then C. & M. Division number 37, leaving there at 8:45; then C. & M. number 3 leaving there at 9:25, and C. & C. B, number 3, leaving there at 9:50. Then comes C. & M. number 15, this train that was wrecked, leaving there at 1:15. Number 57, our fast mail, leaves at 9:55. In addition to those we have two work trains, using number 1 main, leaving Western Avenue; one leaves at 5:25, and the other leaves at 6:25, going to Galewood on the Bluffs Division. Then we had at that time a freight train, C. & M. number 65, leaving Western Avenue at eight o'clock, and Janesville Line number 165, leaving there at nine, all using number 1 main.

(Deposition of W. C. Bush.)

Northbound, we have a couple of merchandise pulls, that use number 1 main; they leave Union Street about 7:30 and pass Pacific Junction about 7:50. These passenger trains are all scheduled from 15 to 20 minutes between the Union Depot,—18 to 20 minutes between the Union Depot and Pacific Junction. The more important trains have a ten-minute schedule from the Union Depot to Western Avenue, and the suburban trains have a schedule of twelve minutes, to Western Avenue. That makes them two minutes slower, and then their time is probably a minute more between Western Avenue and Pacific Junction. Number 15 on the night of March 21st, 1914, left the Union Depot, in Chicago, right on time, 10:15. This train stopped at Western Avenue that night. That would bring it to the point of the accident about 10:28, that is about twelve minutes. They have a ten-minute schedule to Western Avenue; about 10:29, that is three or four blocks, and their schedule by Pacific Junction is 10:30 or 10:31. I presume that was about 10:29 instead of 10:28. Yes, sir. I observed the forward trucks of the tourist car. They were off the track. The wheels were just off the rails three or four inches. It only required a frog to put those on. The rear trucks were on the track. I do not know of any repairs being made to that tourist car before it was put into the new train to go out. [48].

Q. Do you think of anything else, Mr. Bush, in connection with this hearing? A. No, sir.

(Deposition of W. C. Bush.)

On cross-examination by Mr. Long, the witness, Mr Bush, testified as follows:

At that time the schedule of train number 15 from the Union Station to Western Avenue was ten minutes. The distance is about three miles from the Union Depot to Western Avenue. The schedule from Western Avenue to Pacific Junction was ten minutes. My remembrance is that it is about two miles. It is over two miles, between two and three miles. Of course, that includes a stop at Western Avenue. That is a schedule of twenty-five minutes from the Union Station to Pacific Junction, with the one stop at Western Avenue. They leave the Union Depot at 10:15 and go by Pacific Junction at 10:31. It is a schedule of sixteen minutes. That would be a schedule of six minutes for the two miles between Western Avenue and Pacific Junction.

Q. You don't remember distinctly whether there was an angle-bar between the two rails at the place of the derailment or not, as I understand you? A. Well, as I said, I would not say positively. Since the gentlemen have been speaking of it, I have thought that that is right, but I would not state positively.

On track number 1, beyond the point of derailment the rails were torn up. Where the engine—as the engine went over the viaduct, she struck the side of the viaduct, which prevented her from going into the street, and she careened through that viaduct and then whirled and just went and slid along with her wheels towards the way she was going, ly-

(Deposition of W. C. Bush.)

ing on her side, and she tore up two or three tracks as she slid for about 100 feet. I think it was about 100 feet from the place of derailment to where the engine laid. I think she was about 100 feet away from the viaduct, on the other side, north of the viaduct. The engine was when she stopped about 225 [49] or 230 feet—about 230 feet from where she went off the track.

Q. Now in that distance of 225 feet, the rails at places were torn up? A. After she went through the viaduct she tore up the rails, yes, sir. South of the viaduct I did not see any rails torn up except where this rail had been taken out, where the rail was moved over. Q. You don't know who moved that over, of your own knowledge? A. I wish I did, I would get \$500.00. Q. Were there other broken angle-bars about the scene of the accident? A. Well, now, I don't remember about the track north of the viaduct. I know the rails, big 100 pound rails, were bent almost double, and of course there must have been some angle-bars broken, in order to pull them out from the track. Q. Is that your best recollection, that the rails were bent and that some angle-bars were broken? A. North of the viaduct, yes, there was. Q. Any loose spikes around there? A. There was some spikes, if I remember right—there was some spikes lying where these spikes had been pulled out, where the holes were in the ties, where the spikes had been pulled out of this receiving-rail that was moved over.

Q. You never saw those pulled? A. I saw the

(Deposition of W. C. Bush.)

holes where the spikes had been. Q. You do not know but that a trackman had pulled those out, so far as your own knowledge is concerned, do you?

A. Yes. Well, now, you see—of course I did not see the trackmen pull them. Q. You did not see

anyone pull them, did you? A. No, I did not. The bonding wires were not broken either. The bonding wires were broken where the rails had been bent up, after the accident.

Q. You do not know of your own knowledge anything about the speed of the train, or whether—of this train at the time of this accident—or whether they had a headlight, or anything of the kind? A. Yes, there was a headlight, because we picked up the headlight afterwards. It was an electric headlight. The engine was practically stripped at the time, after the accident, and the speed limit is twenty-five miles an hour across Pacific Junction crossing. I do [50] not know how fast this particular train was running. I could not say whether the headlight was lighted or not. If it is on a straight track the headlight would throw a light quite a long distance. Well, on a track I should imagine it would throw it, in a straight direction, three or four blocks. It is my impression that with this slight curve there, that the reflection from the headlight—it would be questionable whether the reflection of the headlight would be on that receiving rail. I am not positive about that. I would not make a positive statement unless I rode an engine there to see. I do not know definitely, but with a little curve, of course we know that the light shines di-

(Deposition of W. C. Bush.)

rectly ahead of the engine, and if the engine is on a little curve, it would naturally reflect the light away from the inner rail of the curve. That would depend of course on the extent of the curve, and the distance between a given point that you are looking at and the position of the engine.

Michael Burke, being called as a witness on behalf of the defendant, being first duly sworn, testified, on direct examination by Mr Lee, as follows:

**[Testimony of Michael Burke, for Defendant.]**

My name is Michael Burke, I am fifty-six years old, and live at 1802 North Keller Avenue, Chicago, Illinois. I have been road-master and building track, construction, for the Chicago, Milwaukee & St. Paul Railway Company for the last sixteen years. I have been engaged in the railway business for forty-two years. Aside from being road-master, I have been engaged principally in building track, grading track, construction work and maintenance of way. On the 21st of March, 1914, my duties as road-master were to see that the track was always in proper condition. I have about 289 miles of track under my jurisdiction. In fact, I have got all the superintendent has got in the Chicago terminals. My jurisdiction includes the portion of the track between Western Avenue and Pacific Junction, where this accident occurred. We have got four [51] tracks there. The curve at that place, I should say, is about one degree, not over one degree.

Q., And by a one-degree curve you mean that it

(Deposition of Michael Burke.)

is one degree in one hundred feet? A. No, one degree would mean—well, 360 degrees in a circle, it would be that part of a circle. Q. Yes, but for what distance would—that is, for what distance would give you the radius of the circle? A. Well, now to define it rightly, if you take a 62 foot string and string it on the inner side of the outer rail or the inner side of the lower rail, to the middle of the quadrant, 31 feet each side, you would have a one-inch play. You can determine it without a circle in that way. Q. One inch each 35 feet? A. The half of the string would be the middle quadrant, that would be 31 feet. Q. A one-degree curve is a very slight degree curve or a great degree curve?

A. It is a very slight degree from a straight line, a very slight deflection from a straight line, is a one-degree curve.

I reached the wreck I should say 35 or maybe forty minutes after it occurred. Mr. Lempke was there and Mr. Rupp, and I think Mr. Bush got there about the same time, assistant superintendent. I went over that track on that day about—well, I would strike there about five thirty that night, on a work train. That evening before the wreck. We rode a work train from Western Avenue, to take the night shift, the watchman and trainmen and engineers, all out to the big yards, and my home is on the same line, and I always ride that train home. I rode that train home that night, and rode on the hind end of the caboose, on the platform.

Q. That is your work, is it, in going over the

(Deposition of Michael Burke.)

tracks? A. Always ride the hind end, yes, sir. Our train went out on track designated as number 1, northbound. That is this track in question. Q. And what is the fact as to your observing the track as you rode on out there? A. Perfect condition.

Mr. WILLIAMS.—I move to strike that as not responsive. [52]

(No ruling.)

Mr. LEE.—Q. Well, did you observe the track as you rode? A. Yes, sir. The track was in good condition. I did not notice anything unusual or out of the way with reference to this portion of the track that evening. Had there been any such defect as the witnesses have described it would not have been possible for our train to have gone over the track in safety. Had there been any such defect I would certainly have been able to observe it. But I saw nothing of the kind. The track is laid with one hundred pound A R A type of rail, which is about as heavy as any rail used in Chicago.

Q. Calling your attention to this rail here in court, did you notice what rail that is? A. That is one hundred pound A R A. That is the rail in question, yes, sir. It has been laying on the right of way, not over one hundred feet from where the accident occurred, ever since the accident. I have seen it there every day. This is not the entire rail, but is ten feet cut off of it. I cut that off a week ago last Monday, before I left Chicago, for the purpose of bringing it here. We have eighteen red

(Deposition of Michael Burke.)

oak treated ties, some prepared red oak treated, and white oak to the standard thirty-three foot rail. We treat the red oak ties to get more lasting life out of them. Zinc treatment, sometimes creosote; treatment to keep insects away from them, make them last longer. This portion of the track had been retied the spring before. We always go over that track every year and take out the bad ties and renew them with good ones; don't have to tak them all out. That had been done, I should say, about September before the wreck. This was in September. We would close our work up usually about September or October, we would finish it before the frost gets in the ground. Each tie has got four spikes in it; that is, two in each rail and they are driven angularly, the two inside spikes are opposite each other and the two outside spikes are opposite each other, and every tie is spiked with four spikes. We use five and a half by nine-sixteenths spikes, [53] Billmuths-Porter spikes, five and a half by nine-sixteenths inches. That is a standard spike. The rail is joined at the end with what we call an angle-bar with four bolts, two in each rail. The angle-bar is about twenty-four inches long, that would lap over twelve inches on each rail. The holes in the end of the rail are for inch bolts to put bolts and nuts through the angle-bar and through the rail. Q. I call your attention to a piece of iron that I have in my hand; I will ask you what that is, Mr. Burke. A. That is part of an angle-bar that was broken, that was found be-

(Deposition of Michael Burke.)

ween the rails. Q. That is part of an angle-bar, is it, that was united with the ends of these rails?

A. Yes, angle-bar known as the type called one hundred per cent. That is the type of angle-bar that it is. One hundred per cent means the name of the nature or type of angle-bar. The trade name.

Q. Now, I notice a slot here on the side, the side of the lower part of the rail. What is the purpose of that? A. That is where the tie goes under the joint and that is a slot spike to keep the rail from running with the traffic. If I had the other angle-bar the slot would be in that, about there. There are four of these slots within an angle-bar, two on the inside angle-bar and two on the outside angle-bar, in each joint, and four holes through the angle-bar and at the end of the two rails.

Q. Now, Mr. Burke, is there anything else that joins the rails at the ends? A. Yes, sir, in this we have got the block signal and the rail— Q. (Interrupting.) What do you mean by the block signal? A. The block signal is operated by electric signals that displays to the engineer pulling the train whether there is any train in the block ahead of him. Q. That is, there is an arm that is upright for one signal and slanting for another and horizontal for another? A. Yes, sir. Q. That is known as a semaphore? A. Yes, sir. Q. And that is operated by electricity upon the wires or the rails, which? A. Why, the rail is to carry the expansion. [54] Always when you lay your rail you have a little expansion in there you know. You do not

(Deposition of Michael Burke.)

never heel tight because the rails in summer expand and in winter contract.

Q. I call your attention to this piece of wire on the righthand side of the rail as you face the jury. Is that a part of the bonding wire that was on the rail? A. Yes, sir. Q. Just explain how that extended around to the other rail. A. That attaches about as far on the receiving rail. That wire should extend about as far there. It is also soldered on this rail first and then soldered on that. Q. Fastened in the same manner in which it is here? A. Yes, sir, exactly. You can pull that wire up, you can pull it out six inches. Q. It is put in loosely around the joint? A. Yes, sir. These three bolts (shown witness, two of them with nuts on) are the inch track bolts we use on the one hundred per cent angle-bar. These are the type of bolts that are used on this type of rail and angle-bar to fasten them together at the joint. To secure the nuts against loosening, we put a nut-lock on them, just like that lock right there. That is a Verona nut-lock. Its purpose is to work against the head of the bolt to keep the nut on. That is a steel spring. You see that that will be flat when you get your nut on. You take that ring and do that and then it is flat. And then as it may spring out, it keeps the head of the bolt tight against the rail. The method of construction which I have described applies to this particular point where the wreck occurred, and all the way from Pacific Junction to Western Junction, that is the type of rail in the main track. When I arrived at the wreck I came

(Deposition of Michael Burke.)

there from the north. As I said, my home is near Pacific Junction, about a half a mile. I came on the wrecker, got down as close as we could to the wreck with the wrecker, got off, and the first of course I passed was the engine. I went over and inquired if there was anybody hurt, or how the engineer and fireman—if they were hurt bad. The engine was in bad shape. After I looked that over they told me they wasn't. I went [55] over across the bridge or viaduct, we call it subway. The viaduct was—or subway as we call them in Chicago, the traffic of the street runs under and the railroad above it, and it is erected on concrete abutments about fourteen clearance below for teams to go under, under the bottom of the structure. Well, we have four tracks over that street. That street is known as Pacific Avenue, tracks one, two, three and four. The whole bottom of the bridge is iron plate, with a girder for the rails, what we call an I-beam for the head that sets in onto a wooden cushion under the rail, with bolts ten inches apart. That wood is V-shaped and nuts on top of them that holds the rails on top of the bridge. The supports for the bridge itself are steel girders four feet high, or such a matter. The steel girders are on the side. There is steel girders between each track and on the outside of each track. Two steel girders for each track, one would be a common one between the tracks, five altogether. At the approach of them they go up an incline until they come to a perfect height. At the approach it is about 17 inches from

(Deposition of Michael Burke.)

the top of the rail. Then it goes up an incline to forty-eight inches from the top of the rail; forty-eight inches at the highest point, and then it slopes off to the other end the same way. The break in the track that has been testified to, was about the third joint south of the end of these steel girders, that would be about 70 or 80 feet.

The engine was lying on its side on the north side of the subway. When I saw the engine I wondered how anyone ever got out of it alive. There was no cab on it at all, no smokestack, no headlight, tipped over on its side. I could tell from the appearance of the engine there and the track where the engine had left the rail, and how it traveled from the point it left the rail to where I found it. The mark was right there on the viaduct. When the engine struck the rail she went off very abruptly outside that rail, that is the east rail or the inner rail on the curve, the east rail of the track, and the side of the girder held her up until she got through [56] to the north end of the bridge and as soon as she got through to the north end of the bridge she naturally took a jump and went over the northwest and laid across the four tracks. We had to take the pilot off of her to open number 4 track before we could run a train out. I remember that quite well. The cars had not been removed when I got there. The sleeper was upon the rails, but the baggage-car was pulled down the bank north of the engine. The tank was gone and then turned bottom side up, the engine tank, on the east side of the track, the inside of the

(Deposition of Michael Burke.)

curve. The first-class day coach stood partly on the engine, and the tourist car behind that with the forward pair of trucks all off the track. The forward trucks of the tourist car were off or away from the rail, I should say, two or three inches. These forward trucks had run upon the ties about eighty or ninety feet, so that the were derailed somewhere before coming to that point. The tourist car as I remember was pretty near right where the opening in the track was. The forward end of the tourist car was just a litte bit ahead of the opening in the track. The other car, I think, stood in behind the day coaches. I observed the condition of the receiving rail, with reference to its being spiked to the track. When I got there, after I looked the engine over, I went first to find out, see if I could see what caused the derailment. Hadn't seen anybody, and I met Mr. Lemke, special agent; he got there before I got there, and he called my attention to the track and to the angle-bars, and so I says—well, when he showed me the track where the derailment occurred, I saw the spikes had been removed on the inner rail, on the inner side of the receiving-rail. Well, the rail—we will say now that the engine is facing this way and that rail is facing the engine. This is the way the curve runs, curves in this way. When I got there I found the spikes pulled on this side, right along there. The other rail is right along there. This is our spike in here; this is the usual spike in the rail, but that had been eight or nine [57] ties, which would be half a rail length, pulled all out of there,

(Deposition of Michael Burke.)

holes just fresh, and laying along there. The spikes were laying along there. The spikes on the other side of the rail had not been disturbed. They were still there. I observed the condition of the spikes in the rail immediately south of that. The spikes in that rail had been pulled on the outer side of that rail, that would be the side next to the lake, here for about five or six ties, but I noticed here that there was one spike which could not be drawn, and they couldn't get hold of it with their bar—

Mr. WILLIAMS.—I object to what they could do. State the conditions.

The COURT.—Yes.

Mr. LEE.—Q. The spike, you say, was driven down so the head was imbedded? A. Yes, sir.

Defendant's Exhibit 2 is what we call a crowbar, used for pulling spikes, where the spike is driven up straight, and it is not too far down in, and they shove the bar under the side of the spike and take a fulcrum, pull on it and pull the spikes out. Q. This spike that you say was driven down were there any marks on the tie to indicate whether any attempt had been made to pull the spike? A. Yes, sir, there was marks that the bar had been tried to get around the spike. Q. That you say was the fifth or sixth tie back from the joint? A. The open joint, yes, sir.

That was the outside of the south rail. On the inner side of this rail there were pulled eight or nine spikes, I think. I did not count them exactly. That would be about half the rail, about sixteen feet, sixteen and a half or seventeen feet.

(Deposition of Michael Burke.)

A. Where was the outer side or the base of the rail with reference to the spikes that were still in the ties on the outer side? A. That would be the raised rail, the outer edge of the rail? It was about three to three and a half inches in. The groove or gash that appears in the edge of the rail was there that morning, and it had [58] fresh marks on it. Well, I can say that from my experience I figured that is where the engine, forward trucks of the engine, hit the rail, made that mark. Q. Now, I wish you would place the short end of the rail here and the other rail in the relative positions in which you observed them at that time. A. Well, they would have about that much expansion. The lowest rail would be in about that much. That is the way it looked to me. That is about the way the rail was when the engine struck it.

Mr. WILLIAMS.—I object and move to strike his statement as to where the engine struck it.

The COURT.—Yes, I will sustain the objection to that. That is a conclusion.

Mr. LEE.—Q. That was the position in which you found that at the time you saw it? A. Yes, sir.

Q. The rail upon which the engine appeared is represented by this short piece of rail, is it; was that in its original position on the ties? A. It was in its original position on the ties; that rail had never been removed although five spikes were pulled; it was not removed. Q. The spikes upon the inside of the rails were holding? A. That piece of angle-bar was lying outside of the track at that time, when Mr.

(Deposition of Michael Burke.)

Lemke called my attention to it, right near the rail in that shape. The other part of the angle-bar was lying inside the track when he called my attention to it. The other part I presume was picked up with the scrap, when they cleared up the wreck. I do not know where it is. I was not able to bring that along. That rail was not bent in any way before this derailment. It was bent when I found it just the reverse of what it ought to be for the curve. There is a little bend in it yet.

Mr. WILLIAMS.—Q. Has it been straightened?

A. No.

Mr. LEE.—Q. Nothing done to it? A. No. In fact I had a notion to put it in a sidetrack. It would go all right in a sidetrack, but I let it lay there. This curve or bend that we see in [59] here is exactly the opposite way from the curve in the track. Now, the trucks hit it—the wheel going out, hit it, you know—

Mr. WILLIAMS.—I object to that as a conclusion.

(No ruling.)

Mr. LEE.—Q. Now, assuming, Mr. Burke, that the rails were in the position in which you had placed them and that the engine was running along on these rails, where would the flange of the inside wheel be? A. The flange of the inside wheel would be about an inch and a quarter away from the ball of that rail. The flange of the outside wheel, the wheel would be hugging the outer rail on a curve, would be fitting up snug to the outer rail going around a curve.

(Deposition of Michael Burke.)

When a car or engine is running upon a track, the tendency to go straight ahead brings the flange against the rail. There would be about an inch or an inch and a quarter between the flange and the inner side of the rail. That depends somewhat upon the amount of wear there has been upon the outer rail and wheel. The standard gauge of track is four feet eight and a half inches. This rail was laid in 1912 by my men under my supervision. The standard gauge of a track is fifty-three inches from the inner side of flange to inner side of flange.

If these rails were in that position and the engine coming along here on these rails, the flange would strike the receiving rail about an inch and three-quarters from this side, about the place where that mark appears on the rail. It would be easy to crowd this receiving rail into that position when the spikes on the inside were removed, to crowd it in for that distance of three and a half inches. I will show you how it would be done. I have done it myself lots of times. You take your spike that is not pulled and take your crowbar right there and use that as a fulcrum, and you pull against that, and one man has a good power, and you can shove it right in, spring it right in. That is the way it is done with trackmen. The rail would not remain in that position. It would spring right back unless [60] there was a spike put in there or an old angle-bar put in or something to hold it in position.

(The witness, upon request, placed the angle-bar in such position.)

(Deposition of Michael Burke.)

Q. Any other way it could be done? A. Yes, it could go this way. That is the way it was done.

Mr. WILLIAMS.—I move to strike that “That is the way it was done” as not responsive.

(No ruling.)

That is the way it could be done or is done sometimes when you want to hold the rail in position. Assuming that the sides of the wheel did strike the rail in that manner, making the mark as it appears there, the effect upon the engine would be that it would jump right up after it struck that rail. If it were going 25 or 30 miles an hour the engine would jump up and hit the ground on pretty short notice. The indications are that it looks like she jumped up pretty sudden or it would appear along further ahead. It would have marked the rail for some length. My judgment is that when the wheel hit that and jumped up she got outside of it and crossed the rail and bent it. She got right on the bridge side-ways, and was right on the side of the bridge, the side of the bridge caught her and held her up. Yes, sir, I am simply giving my opinion—well, the marks were right on the bridge; the marks were on the iron work of the bridge and that bent on the bridge had to be taken out to repair it, all bent out. As soon as she got out of the side of the bridge she went off in that direction, to the northeast that would be, hugging the outer side of the curve. The rails over there were bent badly, some of them pretty near double. I imagine the engine struck the angle-bar, breaking it. The driver came down upon it.

(Deposition of Michael Burke.)

Defendant's Exhibit 3 is called a track wrench, used for putting in track bolts. Used in this manner. I saw the spikes lying along the side of the track. They were all straight, good [61] spikes. I used them again in ties, what I had to use in ties, repairing the track there, drove them back in the ties. I did not find the bolts, the special agent gave me the bolts. He found them before I got there. He was there ahead of me. These are the bolts he gave me. They have been right in my office, since that time, under my desk. I put them in this box and brought them here myself. These are the identical bolts that the special agent gave me that night, at the scene of the wreck. They are in just the same condition they were at that time. They are a little rusty now, of course, on account of not being used. This nut-lock is not that one. It is the same as we use. As to the outer rail being in its normal position, the outer rail, where the break—where the rail was found open, was all right. We did not have to change that at all. And the gauge, as indicated by the rail upon which the engine was running, and the outer rail, is the standard gauge. In other words, there was no spreading of the rail at that point. When there is a spreading of the rails on a curve the outer rail moves, on account of the pressure being against the outer rail. The inner rail never moves in such a case on a curve of that degree. The inner rail would remain stationary. Not as much strain upon that rail. A track is kept up in first class condition, the inner rail never spreads; it is the outer rail.

(Deposition of Michael Burke.)

Q. What section crews or extra gangs or other trackmen were working upon this section of the track at that time? A. Well, I have one foreman there at Pacific Junction. Mr. Hyer, and he has a crew under him of about three men at that time of year. We don't work very many men. Our track is in good condition. As to other men working on this portion of the track, there was a special agent there, special policeman. There were no other track workers who would have anything to do with the condition of the track. There would be none of the railway employees engaged upon that section of the track between five o'clock and the time of the wreck.  
[62]

Q. Did you on that evening or the next day observe any other place in that vicinity where the track had been tampered with?

Mr. WILLIAMS.—I object to that and move to strike the words "tampered with."

(No ruling.)

Mr. LEE.—Q. Well, where it was out of condition then, if you object to that term. I don't think there is any question whether this was tampered with or not.

Mr. WILLIAMS.—I object to that. I do not think he has a right to make an argument here.

The COURT.—He may answer the question.

A. Why, yes. If I may answer that question, why, my attention was called by the special agent—

Mr. WILLIAMS.—You are asked to tell about what you saw.

(Deposition of Michael Burke.)

The COURT.—State what you observed.

A. I found another place where there was two bolts taken out of a rail further south on the same track.

Q. How far from that? A. One block. Q. You speak about blocks in this testimony. How far is a block in Chicago? A. Well, I should say this block would be one thousand feet, one thousand feet east of where this accident occurred. Q. Then, it was about one thousand feet from Potomac Avenue and that other point you refer to? A. To Division Street. These viaducts are on every block, and that is the way we go by; every block has a viaduct, where a street goes under the tracks. I observed there near Division Street, there was two bolts out of one joint, there on the same side of the rail—track. No spikes were pulled from the ties, or anything of that kind; that is near where the wrench was found. I was not there when the wrench and crowbar were found. I didn't see it until they brought it up. I don't know anything about the matter personally.

Q. Was it necessary, Mr. Burke, to relay any of the ties at this point? Were they in bad condition so that they had to be [63] relaid? A. The ties, after the engine got through the bridge and started to go off her side, they were pretty badly cut up there. There were no rotten ties or ties in bad condition. We put in a few ties south of the bridge, not many. None under these particular rails. We simply took another rail and laid it down there and spiked it on the same ties. From my observation there was no defect in the track at the point of derailment, or any-

(Deposition of Michael Burke.)

thing to indicate that there was any defect which might have caused the wreck, other than this condition of the rail which I have testified concerning, that is, this opening of the rails. The bond wires were not broken. If the bond wires had been broken, it would have resulted in putting the signal system at danger. If these wires had been in any manner broken the signal one thousand feet south would have shown danger as the engine came up. They were not broken at the time I examined them. If this break in these rails, that I have described, had been made in consequence of the wreck, or by the force of the derailment, in any way, the condition of the bolts, spikes, ties, the rails, and so on, they would have all broken off, if it was made on account of that. It would not have been possible for the bolts to have been in the condition in which these bolts are, or the rail to have been in the condition that it is in.

On cross-examination by Mr. Williams, the witness, Mr. Burke, testified as follows:

Yes, sir, I have had quite an experience with wrecks, where trains have left the track, and where there was a general piling up of the train, and where I have attempted *afterwards* what was the cause of them. No, sir, on our line it is not quite a frequent occurrence, for wrecks of that sort. I have seen many of them, yes, sir. I have seen them on our line. As to my always being able to tell just what caused the wreck, well, they can come pretty close to it generally. You see, it ain't left to one man. I can tell about as much as any other man of my experience.

(Deposition of Michael Burke.)

Yes, sir, [64] sometimes experts on that differ considerably. I have always—I have only known one that they didn't find the cause in my forty-six years' railroading, that they didn't find the cause that satisfied me. Whenever a train leaves the track, where it is travelling at a speed of 25 or 30 miles an hour, it piles them up pretty generally, and changes existing conditions very much.

Q. Pretty hard to tell from the condition that you find after the wreck just what they were before the wreck? A. Oh, not if you are familiar with the tracks, if you know what kind of a condition the track was before the wreck. I knew pretty near each individual tie and rail along that track, I can tell you; that is my business. It is not my business to walk the track daily, no, sir. I simply am over it occasionally and examine it as I go along. Well, it is different in my territory than on the main line road you know. Terminal work, there isn't much other way to get to your men only work with or ride on the hand-car with them. In terminal work I figure it is necessary to give it a higher degree of care than other points. No, the place of the wreck was further than three miles from the Union Station. It was three miles from the Union Station to Western Avenue, and this was about a mile and a half north. Our time-card says west, but is north, north of Western Avenue. That would be about four to four and a half miles from the Union Station, still in the City of Chicago. Well, it isn't awfully thickly settled right at the place where that derailment occurred.

(Deposition of Michael Burke.)

There is quite a piece of prairie there, three or four blocks that have been held for building factories on. There are not houses around on both sides, at this particular place; there is further on, a block or so. Farther on there are not business buildings; principally residences, factories. Yes, there are street lights along there, light on each side of that subway, under that four-track subway, five lights on each side and a big arc light at the entrance. When I am speaking of the subway, I do not refer to Pacific Avenue, [65] but to Potomac Avenue. On Potomac Avenue, on each side of that avenue, there are many lights on the viaduct, down in the bottom, where the traffic goes through. No light above. No arc lights off to the side anywhere along there; only the signal light down south of there. That is the only light. Well, yes, there are street lights up and down through that section, a couple of blocks there are street lights; pretty well lighted along there.

Q. So even at night, without any headlight, you could see fairly well? A. Well, you can see; yes, sir. An engineer could see his signals, if he was watching them, without headlights. We have got all electric headlights. Well, as I remember it, when I was called, the night was pretty—kind of raw—little bit of snow falling, kind of a raw stormy night. Just a little snow and rain mixed, kind of sleety. No, no snow on the ground; just about the time I got there kind of sleety rain, but no snow on the ground. When I got there I found the wreck. I think the engine left the track about 82 feet, 75 or 82 feet, along

(Deposition of Michael Burke.)

there south of Potomac Avenue. With reference to Potomac Avenue, the engine was lying, she went clear through Potomac Avenue Bridge—there is about ninety feet of that, and then as soon as she got through to the north side of the bridge she vaulted off on her side to the northwest, the opposite to where the opening was in the rail, the outer side of the curve. The head of the engine, as it lay when I came there, I should judge was north of Potomac Avenue in the neighborhood of ninety feet, itself, about. I should judge about 150 or 120 feet, 150—about 150 feet. The entire distance to the head of the engine when I got there, from the point where I think it left the rail, would be a distance of about 320 feet; something at least over one hundred yards. No, according to my idea, the engine all of that entire distance had not been plowing through the earth or through the rails or anything that was in the way there; it was riding the rails on the side, the other side of the track, that is on the bridge, on the iron of the bridge. [66] Q. Well, until it reached the bridge it had to run over the substances that composed the roadbed, wouldn't it? A. The substance composing the roadbed is an iron bottom bridge. Before it reached Potomac Avenue it ran over the ties and gravel, plowing through that way.

The next car to the engine was the baggage-car. It crossed over Potomac Avenue. After the baggage-car got over to the engine it went down to the east side of the track. The marks were on the bridge where it run over the bridge, that is, where the bag-

(Deposition of Michael Burke.)

gage-car went over the bridge. It would be pretty hard to distinguish between the marks made by the baggage-car and the engine. Certainly the tender and the engine and the baggage-car went through the bridge, the three of them. The next car was the first-class coach, day coach. It was standing on the bridge off of Potomac Avenue. The next coach was a first-class coach. It was partly on the bridge and partly off. The next, I believe, was the tourist sleeper, the front trucks of which were just off the rail. The tender was down the embankment about 150 feet north of the bridge, on the east side of the track and ahead of the baggage-car. I suppose it crossed the bridge on the rails and ties; they all got through the bridge some way or other. All told, there left the tracks the engine, the tender, the baggage-car and two day coaches, and the front end of the tourist car. Assuming that this mark on this rail—that is the rail, and that this scar was made by this accident, I do not know that the thing that made this scar went off at an angle of 90 degrees. I don't know what degree it went off at, but I know it struck the side of the bridge and pulled the side of the bridge out and carried it through the bridge, went off pretty straight. I don't think it went off at 45 degrees. The marks don't show it going off that way. Q. Look at the mark on that, Mr. Burke; doesn't that mark show it struck at an angle of about 45 degrees? A. The engine would naturally jump up when she would hit that mark. I don't know what degree that is. [67]

That is a pretty short angle, but I don't think the

(Deposition of Michael Burke.)

mark shows it was at an angle of 45 degrees, though. I would say that angle is, oh, about twenty degrees.

Q. That is assuming that the engine was running in that direction, then when it made that mark the engine turned in an angle of about that, did it not?

A. The engine was not running in that direction. Q.

How could it make the mark, then, in that position, unless it was hit? A. The engine was running in

this direction before it was hit, diagonally, following the inner rail. The mark as the impression is made

on this rail, is not over twenty degrees. I presume it would be the first wheel on the engine that struck it,

the pony trucks. Well, no, the weight on the pony trucks is not particularly heavy; they are adjust-

able. I guess the engineer could tell more about that than I could. I don't know much about such mat-

ters. The engineer is here. As to the trucks swinging around in this kind of a way, in any event, I think

they have a little lateral motion in them; I wouldn't be sure about that. I don't know how much lateral

motion they have. It is not a part of my duties to understand that. Yes, I know something about ma-

chinery. I don't know anything about running an engine, or keeping it up. I can't say whether it has

a motion so that as the forward end of the boiler or engine is lifted up you can swing the trucks clear

around; I don't know anything about that. But I do know, from the appearance of that rail that when

that truck, if it was caused by the truck striking it, it threw it off on at least an angle of 20 degrees. Q.

And you know, also, as a question of mathematics,

(Deposition of Michael Burke.)

that that would throw the forward part of the engine going about the same direction, wouldn't it? A. Didn't do it. Q. I am speaking, you know, as an expert, Mr. Burke. A. The engine certainly did not go over the bridge. As to the law of moving bodies, under conditions of this kind, I suppose if the sides of the bridge wasn't there she would have gone down to the street. That is what saved it. The sides of the [68] bridge certainly did stop that engine. I can't lay it to anything else. I don't know the approximate weight of the engine. The construction of the bridge is thick iron, riveted. The front of the engine had about 85 feet to go before it reached the side of the bridge. The rail I am referring to is the rail nearest the lake on track number 1. If the front of the engine was thrown at an angle such as I have described, of 20 degrees, I don't know whether it would reach the bridge. She did, though. I am not an expert. I don't claim to be an expert, I am a trackman. The grade is about ten feet outside of the rail, outside of the east rail. If the engine had gone a distance of ten feet to the east it would have gone over the embankment. There is not a thing at that embankment to keep the engine from going over, and in going that ten feet, if it was coming off the east side, it had 70 or 80 feet in which to take up that space of ten feet before it reached the bridge.

The fact is that the ground was not torn up badly. The frost had not gone out of the ground at that time of the year in Chicago. Even with the frost in the ground a heavy object like that did not tear up the

(Deposition of Michael Burke.)

ground much. Yes, I could tell where the wheels had gone. I could trace the wheels right on to the bridge. The wheels of the engine, immediately following the time when it touched the track, followed up here. The marks is there to-day. The line of the locomotive as it continued up to Potomac Avenue was on the ties, and the ties are only 16 inches outside the base of the rail. The marks of the engine didn't—it did not continue on a straight line until it got across Potomac Avenue. It was outside the rail and went down to that, against the east side of the bridge. It bent the whole first section of the bridge; that had to be taken out afterwards. According to the marks I found, it turned off from the east rail before it reached Potomac Avenue about 12 inches. Outside of a variation of about 12 inches, it continued on a straight line until it struck the bridge. Assuming that the forward trucks of the [69] engine might have struck here as I indicated, I do not know where the drivers struck. I don't know anything about that. I did not find any indication of that; nothing of the sort. I did not attempt to find it. That night I invesigated everything I could investigate, found just as I have stated, found the track pulled, found the angle-bar here, and the rail broken. I reached there about 35 minutes after the accident. There were not many people around there when I was; no passengers around there. I didn't see any passengers, only trainmen. I wasn't looking for them. I would see them if they were there. They were not around where I was. They were around where the

(Deposition of Michael Burke.)

wreck was, yes, sir. I did not see some of them about the point where the tourist car had left the track. I did not see anyone there. The tourist car left the track pretty close to where the break was in the rail. I think that is where it left. I think that is where they all left. I couldn't tell, no, sir. The front trucks of the tourist car were a little ahead of the break in the track. I did not examine them particularly. I did not examine them to see if there was any break in the flanges of the wheels. Yes, I looked the engine over, as I came down, the first thing, to see if there was any break in the flanges of the wheels. I can't tell exactly how long it took me to examine the engine. It was examined in a way. The upper side was all I could see. The lower part was buried in the gravel. The part opposite was sticking in the gravel. It did that, notwithstanding the frozen ground. The engine was lying on her side. I examined the wheels, yes, sir. I don't know, to tell you the truth, how long I was examining them. Five or ten minutes. I went straight to the point where this rail was. I passed the engine first before I went ahead. That is the only investigation I ever made of that wreck, yes, sir. I looked at the tender; I didn't examine it much until we were going to put it on the track. It was clear down the slope, the bottom of the slope. I examined it about half an hour or an hour after the wreck. [70] I did not examine the baggage-car. I never examined the first passenger coach or the second passenger coach, or the wheels of any of those coaches.

(Deposition of Michael Burke.)

The COURT.—Ask him if he examined any part of the train and it will probably save time. If you expect to get through to-night, gentlemen, you will have to move on a little faster.

Mr. WILLIAMS.—Q. Well, was there any other examination than this after about five minutes that you gave the engine when you came there? A. Never made any more than I stated. When I went back to the point where the tourist car had gone off the rail, I made no more examination of the rail at that point than I made the first time. Just the first examination. I said there were some spikes out. I don't know how they were taken out. I never saw them taken out. With reference to that crowbar that I have been asked about, that, I think, is a Milwaukee crowbar. I do not know who put it out in the hole. I don't know anything about that. I don't know how the wrench and crowbar got under the viaduct. They were found by Mr. Hasbaugh. I don't know where they came from. The wrenches and crowbar have got our brand on them. That is the way we brand them, C. M. & St. P. I don't know who put them where they were found. I do not know that they had any connection with this wreck at all.

(The witness again showed where the angle-bar was.)

The angle-bar was in about that way, to hold the rail open, about in like this. No, it was not pushed inside, it was laid there, evidently had been broken off. The rails were pressing against it. The rails as they now lay here were about the situation at the

(Deposition of Michael Burke.)

time when I went to the wreck. This angle-bar lying in there, the way I have now placed it, there is about an inch on each side of play. I wouldn't say it was just that way. I just gave an explanation of how the angle-bar was found. I stated that it was my opinion that this angle-bar was broken by the train striking it. I don't say [71] that it was in that position when the train struck it. I don't know how the angle-bar came to get there. I simply found it there, my attention was called to it.

Q. You know that, occupying the position you have now placed it in, it cannot be broken by a train. A. No. Q. If that angle-bar had anything to do with keeping these rails apart when the train struck it, if it did strike it at that time, you know the angle-bar was not broked by the train, don't you? A. If it would be in just that position it would not, but the angle-bar was probably about there.

Q. Now, with reference to the bend in the rail, Mr. Burke, you know it is a fact, do you not, that the pressure—if a train—the wheels, the weight of going on top of this rail or on the other side of it, there would be a pressure there so as to bend that rail in the condition you found it? A. If the wheel got on the outside of that rail? Q. Yes, sir, it would do that? A. Yes, sir. Q. And it is also a fact, is it not, that if eight spikes were drawn from a rail of that size, 33 feet long, that one man alone can bend that rail but very little back at this end? A. I can shove it in three inches myself. With nine spikes out I can shove it in three inches. Have a fulcrum only back

(Deposition of Michael Burke.)

16 feet, and a rail of that size. I can hold it there while somebody else puts an angle-bar there, yes. One man can do it. I don't know that one man can do that other, but I can hold it while another man places the angle-bar in there. I cannot give in inches, on a distance of 100 yards in a straight line, how much a degree would be. That is as near as I can give it the way I told you. I can draw out a one degree or find a one degree. When I went out over this track at 5:30 on the work train, the train was running all the time at about 15 or 20 miles an hour. I didn't need to stop to make any examination; I can see the main track. I can see if a spike is out, yes, sir. These two bolts to which I have referred, which were a block or two from the scene of [72] the wreck, were not out at that time. No bolt out between Western Avenue and Pacific Junction. If there had been a bolt out at that place, I would have known it. I would have seen it from the train. From the point where this rail was, that I have referred to as having a mark on it, the rails were pretty badly bent across the subway, all across the subway. Some of them were bent to the south of Pacific Avenue, not bad. One of the rails south of Pacific Avenue, was bent, south of the bridge, the first one. We used several of the rails again, straightened them out. If the engine was running on the outside of this rail here it would have no tendency to pull the spikes. It would have a tendency to pull them in, but the spikes would be still in the ties. These spikes go five inches in the tie; five and a half. I saw this

(Deposition of Michael Burke.)

other piece of broken angle-bar; saw it fit in with this one. It made the complete angle-bar. I didn't say it was the angle-bar that had at one time connected these rails. I can't be sure of that now. There was no other angle-bar there. These angle-bars are not easily broken. A man or track crew or somebody could not take a sledge and easily break it. You can't break that with a sledge. It is an uncommon thing to see bolts or spikes laying along the track in that territory. Take it in the yards, you might find a spike occasionally, but not on the main track. As to this being practically within the yards, in the yard limits, main line yard track, Chicago, I should say it was about one thousand feet there, that particular block, about one thousand feet. I should judge the distance between Pacific Junction and Potomac Avenue at about a half mile. The distance between Potomac Avenue and Kedzie Avenue, pretty near a half a mile, too; from the wreck to Kedzie Avenue, about a mile from where the wreck occurred.

On redirect examination by Mr. Lee, Mr. Burke testified as follows:

Q. Mr. Burke, Mr. Williams asked you with reference to the [73] crowbar which I had not showed you. I think you said this is a Milwaukee tool. What is the fact as to that? A. No, I don't think it is a Milwaukee tool. I think it is—

Mr. LEE.—Perhaps you spoke inadvertently. You refer to the crowbar?

Mr. WILLIAMS.—Yes, I did refer to the crowbar, but I didn't intend to.

(Deposition of Michael Burke.)

Mr. LEE.—Now, Mr. Burke, the engine is not a perfectly rigid piece of machinery, is it? A. I don't think so. I don't think it is, and especially her pony trucks. Q. In your judgment, if the mark here was made by the strike of the trucks, the flanges of the trucks, and the engine was derailed at that point, and in that manner, would that mark be perfectly in harmony with the tracks as you found of the engine as it pushed itself or ran along further on?

Mr. WILLIAMS.—I object to that.

The COURT.—I don't think the witness' judgment on that is any better than the judgment of the jury. I will sustain the objection. (Defendant excepted and exception allowed.)

**[Testimony of Mott Sawyer, for Defendant.]**

Mott Sawyer, called as a witness on behalf of the defendant, being first duly sworn, on direct examination by Mr. Lee, testified:

My name is Mott Sawyer. I am superintendent of the Milwaukee on this division. I am a civil engineer, but not a qualified civil engineer, however. I know something about it. To an engineer a one degree curve is a radius of five thousand eight hundred and some odd feet. It is a curve that in a distance of 31 feet gets one inch off a straight line. In other words, a section of that curve three hundred feet long would vary ten inches from a perfectly straight line. It is a curve, I may say, if it is proper to add, a very slight curve. We use them very much sharper than that, generally. [74]

**[Testimony of William A. Lempke, for Defendant.]**

William A. Lempke, called as a witness in behalf of the defendant, being first duly sworn, testified on direct examination by Mr. Lee, as follows:

My name is William A. Lempke. I live at 4546 North Long Avenue, Chicago, Illinois. I am 38 years old. My business is special agent of the Chicago, Milwaukee & St. Paul Railway. My duties consist of police work in investigating robbery claims, personal injuries. On March 21st, 1914, I was working around what is known as the Chicago Terminals. On the last part of that day, about five or five twenty I arrived at Pacific Junction. We called up Pacific Junction to see if there was anything new for us, started walking down south towards Western Avenue. That was about 5:30; arriving at Western Avenue about 6 or 6:15. I passed this portion of the track in question; I do every night. As far as I could see there was nothing wrong with the track when I went by. I generally walk on this number 1 and 2 main tracks, at this point, crossing Pacific Avenue. I can't say whether I walked this particular track at that night. I do not have any distinct recollection of that night. I did not observe anything out of the way, at all, at that time. I later visited the scene of the wreck. I arrived about ten or fifteen minutes after the wreck. I lived only about a mile—at that time I lived at 2147 Weston Street, which is about a mile from where the wreck was. None of the witnesses who testified in this case reached the scene of the wreck before I

(Deposition of William A. Lempke.)

got there. I was the first man there.. I observed the condition that existed there at that time. The two rear sleepers or cars were upon the rails. The rear trucks of the tourist sleeper were upon the rails, and the front trucks off. The front trucks at about the point indicated in the track here. I looked at the condition of this rail joint in question that night, yes, sir. The first thing I did when I got there; I started in at the day coach, the first two day coaches, and went through the whole train, asking each and every person— [75]

The COURT.—That is not material in this trial. I examined the break in this rail about fifteen or twenty minutes after I got there. Nothing had been done in the way of removing cars, or doing anything to straighten up the wreck at that time. One rail was shoved in, and I found one piece of the angle-bar lying on the side of the outer rail on No. 1, the east rail and the other part on the outside, as Mr. Burke described it. I think he was there with me at that time. Upon this receiving-rail there were some spikes pulled and the bolts taken out, because I found them at the foot of the embankment. At the foot of the embankment I found the spikes and one of the angle-bars I found there that was not broken. That was to the east side of the track, down in the weeds. Mr. Hasenbalg was with me. I found them down there. Down at the foot of the embankment where I found the spikes. Directly opposite that joint of the rail. I should judge about 30 feet away, that is, figuring the distance level, from the end of the out-

(Deposition of William A. Lempke.)

side rail to where it slips down to the bottom. The nuts were off the bolts; they have been put on the bolts since. I brought them up and laid them down on the top, alongside the track there and brought them over to Mr. Burke. These, so far as I know, are the identical bolts.

Mr. LEE.—I offer these bolts in evidence.

Mr. WILLIAMS.—I don't think they are identified, but I have no objection.

(The bolts admitted in evidence, and marked Defendant's Exhibit No. 4.)

Subsequently I found a small track wrench and crowbar, about daybreak the next morning, about 200 feet from the foot of the elevation, out in the prairie, in the woods. I came back to the track. That is that crowbar right there, and a small monkey-wrench. The crowbar is Defendant's Exhibit 5. I found that in the prairies opposite this point. That is the monkey-wrench. They were away from the break in the track about 200 feet, from the foot of the [76] embankment, that is, where the fence runs along the embankment. I did not find the crowbar and track wrench; Mr. Hasenbalg found them, but I took and removed them from the place where they had been found.

Mr. WILLIAMS.—I move to strike that.

The COURT.—Yes.

Mr. LEE.—Q. Where were they when you first saw them. Up on the abutment of the Division Street viaduct, northeast corner. Mr. Hasenbalg was not with me, I was alone then. I went there after I had

(Deposition of William A. Lempke.)

been told. I received these from the abutment of the Division Street Bridge. That was about one thousand feet from the place of the accident. It is a very long block right in there.

(The Defendant's Exhibits 2 and 3 were offered and admitted.)

Mr. WILLIAMS.—I object as incompetent, irrelevant and immaterial, and not connected with any evidence in connection with this accident.

The COURT.—That is for the jury to say.

(Defendant's Exhibits 2 and 3 admitted.)

On cross-examination by Mr. Williams, the witness, Mr. Lempke, testified as follows:

I lived about a mile from the scene of the accident. Not an easy walk. I came by Chicago Avenue street-car track; my home is within a block of it. I went down within about two or three minutes. I was dressed at the time I received the notice; I had not got to bed yet. I had just about got in that night. It must have been about 10:35 or so, when I received the notice, or 10:40. Anyway, the first thing I did was to interview the passengers. Not until after I had done that did I look at the wreck, or what had happened, or anything. I went through all of these day coaches, the tourist coach and all of them to see the passengers. That took me, I should judge, about fifteen or twenty minutes. I think I could do it in fifteen or twenty minutes. Then I went out and saw something of the accident itself. Well, there was—I can't say there was [77] lots of passengers, but I can't just exactly say how many people there were;

(Deposition of William A. Lempke.)

there was some. With reference to this broken angle-bar I do not know how it got there. I do not know who may have handled it before I got there. I have no knowledge whether or not it might have been put there by somebody; I can't say. These bolts were not on the elevated portion at all, but were lying at the foot of the embankment, where I found them. And the angle-bar I saw down there.

Q. And have you any means of knowing whether these bolts came out of this particular rail or not?

A. That is the bolts that I picked up and handed to

Mr. Burke. Q. I understand, but you don't know

anything about connecting them with this particular rail? A. I can't say. Q. And the same way as to

this wrench that you found on the viaduct, that is about a thousand feet as I understand you, away from the place of the accident? A. Laying up on some of

the shelving underneath, that is the wrench and crowbar, yes. I have no knowledge how they got there.

It showed up on the subway and fresh scratches on the concrete, it showed up very plainly. Somebody

had been up there recently, yes, sir. That is the crowbar that was in the subway with the track

wrench. These two things, whatever they were, if they had been at the scene of this wreck, had been car-

ried by these parties from that distance of about one thousand feet, if they had been used there, yes, sir.

No, sir, this crowbar is not used for the purpose of drawing spikes. I have seen trackmen use them

though to line up tracks with. I can't say whether if parties were wanting to remove a rail, and had this

(Deposition of William A. Lempke.)

drawbar and the wrench, whether there would be any occasion for the crowbar. I am not an expert in track work. The crowbar was lying east from the scene of the wreck, about 200 feet from the foot of the embankment, that is where I found it. The viaduct where I found the wrench was Division Street. That is south of where the wreck occurred. That is the point where I found two bolts missing out of the joint. This is where the clerk happened to find the crowbar, over there, and crowbar [78] and track wrench down there. These other wrenches that I have referred to, I found them with the crowbar, over at that place in the alley.

Mr. LEE.—I offer the rail in evidence.

Mr. WILLIAMS.—To which we object as immaterial.

Mr. LEE.—The rail and angle-bar also.

(Rail and angle-bar admitted in evidence and marked Defendant's Exhibits Nos. 6 and 7.)

**[Testimony of Peter Haddock, for Defendant.]**

PETER HADDOCK, called as a witness on behalf of the defendant, being first duly sworn, on direct examination by Mr. Lee testified as follows:

My full name is Peter Haddock. I live at 3071 Haskell Avenue, Milwaukee, Wisconsin. I am a locomotive engineer for the Chicago, Milwaukee & St. Paul Railway. I have been a locomotive engineer for about seventeen years, and have worked for the defendant for 25 years. Preceding my time as engineer I was fireman for about eight years. I am the engineer who was in charge of this engine on the

(Deposition of Peter Haddock.)

night of the wreck. I took my engine at the Western Avenue roundhouse. I ran my engine down to the Union Depot, the engine was coupled to the train at the depot. I took the engine about 8:30; that night I inspected the engine all over. I inspected the wheels, everything. The engine, as far as I could observe, was in perfect condition. I left the Union Station with the train at 10:15, left on regular time. I did not make any stops between the Union Station and the point of the wreck. The witnesses who testified as to a stop as Western Avenue are mistaken. We reached the point where the train was derailed about 10:30, about fifteen minutes out. Up to the time of the wreck I had not observed anything unusual or irregular in the operation of the engine or the train. She was running all right, everything was all right. I was running about 35 miles an hour. There is no rate of speed; we have no speed rate at all; that is [79] about the regular rate of speed made in my run over that point, be just about the time card. Our regular course was being pursued that night.

Q. What is the fact as to 35 miles an hour being a moderate or excessive rate of speed over such tracks as this? A. No, that track is good for sixty or seventy or eighty miles an hour. Just as fast as you want to go. The headlight was burning. As to what I am doing on this portion of the track; how my attention is taken up as a rule, driving along there, well, just at the station where the wreck occurred, I was looking at the signal at Pacific Junction. Look-

(Deposition of Peter Haddock.)

ing for the semaphore. I had passed a mile and a half by that at Western Avenue. I was looking for the signal at Pacific Junction. I don't think it is possible, driving at thirty miles an hour for an engineer, at that point, as we were driving, to observe the condition of the track so as to see a separation in the rails such as has been decribed here. The light from the headlight would be upon the outside rail of a curve of one degree, so the inside rail would be a little in the shadow. It is not an engineer's duty to watch the rail, anyway.

Mr. WILLIAMS.—I object as calling for a conclusion.

The fact as to that is, it is the engineer's duty to practically watch everything, everything he can. You can't have one eye here and the other on a signal half a mile away; pretty hard work. You can't very well watch for signals at the same time you are watching the rails.

Q. Just tell the jury what you experienced that night; what was the first thing you observed, or what was the subsequent action of the engine at the time of the derailment, how did you first observe there was anything wrong? A. The first thing I knew I was on the ground. Q. Did you observe any jolt or jar before that? A. Not a thing; just as though I had been right off the end of the rail. Q. What do you mean to say; you mean you were on the ground or the [80] engine was on the ground? A. The engine was on the ground or on the ties. Q. Just tell the jury how you observed it; just how it seemed to

(Deposition of Peter Haddock.)

you as you remember it. A. I was going along, as I say, about 35 miles an hour, and as you take this curve the railroad runs along this way, and I was looking for the signal half a mile away, and as I was looking for the signal of course the first thing I knew I was running over the ties; the engine was bumping on the ties the first I knew about it. Q. You did not examine the train? A. No, didn't examine nothing. I was hurt too bad.

(The rest of Mr. Haddock's direct testimony omitted.)

On cross-examination by Mr. Williams, Mr. Haddock testified as follows:

My conductor was Charley Elliott. As regards whose duty it was to inspect the engine, they had got regular inspectors when the engine goes in, who inspect them going in. I inspect them going out. That inspection is made by going over the engine and inspecting every nut and every bolt, examining the wheels. I generally test the wheels by hitting them with a hammer. The usual rate of speed in that section is about thirty-five miles an hour. Twenty-five miles an hour is not the limit. They have got to go faster than that or they can't make time. I was not looking at the track ahead of me. As regards my looking at the track at all after we passed Western Avenue, I was surely looking in front of us all the time going along. I don't remember how far back I was when I looked at the track the last time. I don't remember anything about that. The track was pretty near smooth, I can tell you, because I did not

(Deposition of Peter Haddock.)

see any defect in the track. You can't see an open switch going 35 miles an hour, not until within ten feet of it, or twenty. You can't see the switch point. You can see the light, but you can't see the switch point. I was not looking at this particular point of the track, no. I have never had any experience where I came up [81] and hit in any condition like that, where they are separated. I do not know how it would look. I set the brakes, yes, sir, the emergency brakes, as soon as the engine struck the ties; as soon as I felt the jar, wheels striking the ties. (Witness excused.)

Mr. LEE.—The defendant rests.

Mr. WILLIAMS.—That is the plaintiff's case.

Whereupon a short recess was taken.

**[Motion for Verdict in Favor of Defendant, etc.]**

Mr. LEE.—If the court pleases, at this time, the defendant challenges the sufficiency of the evidence to support any verdict and moves the court to direct a verdict in favor of the defendant on the grounds that there is no evidence of negligence whatever in the case. I would like to be heard upon this unless Your Honor is perfectly familiar with the rule.

The COURT.—I think I am familiar with the rule. My impression is the credibility of the defendant's witnesses is for the jury. If their testimony is true, of course, there is no right of action here.

(Argument.)

The COURT.—I will deny the motion.

(Defendant excepted and exception allowed.)

Whereupon the case was argued by Mr. Williams

on behalf of the plaintiff, thereafter by Mr. Lee on behalf of the defendant, and the final argument was made by Mr. Williams on behalf of the plaintiff.

WHEREUPON the Court instructed the jury.

**[List of Exhibits.]**

Defendant's Exhibit 1—

Defendant's Exhibit 2—Crowbar.

Defendant's Exhibit 3—Track wrench.

Defendant's Exhibit 4—Bolts.

Defendant's Exhibit 5—Crowbar.

Defendant's Exhibit 6—Rail.

Defendant's Exhibit 7—Angle-bar. [82]

**[Certificate to Bill of Exceptions.]**

State of Washington,  
County of Spokane,—ss.

Frank H. Rudkin, Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, and the Judge who presided in said court in the trial of the foregoing cause of Sarah J. Irving vs. Chicago, Milwaukee & St. Paul Railway Company, a corporation, do hereby certify that the matters and proceedings set out in the foregoing Bill of Exceptions, consisting of ——— pages, are matters and proceedings occurring in this cause not already a part of the record therein and that said Bill of Exceptions was filed within the time allowed by law and within the time allowed by order of the Court extending such time and the same are hereby made a part of such record.

I further certify that such amendments as were proposed thereto by the plaintiff have been agreed to

by the defendants, and the same are hereby made a part of such record.

I further certify that the said Bill of Exceptions contains all of the matters and facts material in the proceedings heretofore occurring in the cause and not already a part of the record therein and that the same contains all of the facts material in the proceedings as the parties have agreed to the matters therein and that at the time of the signing of this Bill of Exceptions counsel for the respective parties appeared and consented to the signing thereof without notice or application therefor by either party.

Dated this 30th day of August, A. D. 1915.

(Signed)     FRANK H. RUDKIN,

Judge.

[Endorsements]: Bill of Exceptions. Due service of within Bill of Exceptions is hereby admitted this 27th day of August, A. D. 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Received and filed in the U. S. District Court for the Eastern District of Washington, August 30, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [83]

*In the District Court of the United States, for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Petition for Writ of Error.**

To the Honorable FRANK H. RUDKIN, Judge of  
the District Court, aforesaid:

Now comes Chicago, Milwaukee & St. Paul Railway Company, defendant above named, by its attorneys, and respectfully shows on the 28th day of April, 1915, the jury duly impaneled found a verdict against your petitioner, and in favor of Sarah J. Irving, plaintiff, for \$1500.00, and upon said verdict a final judgment was entered on the 22d day of June, 1915, against your petitioner, the defendant herein.

Your petitioner, feeling itself aggrieved by said verdict and judgment entered thereon as aforesaid, herewith petitions the Court for an order allowing it to prosecute a Writ of Error to the Circuit Court of Appeals of the United States, in and for the Ninth Judicial Circuit, under the laws of the United States in such cases made and provided.

WHEREFORE, the premises considered, your petitioner prays that a Writ of Error do issue, that

an appeal in this behalf to the United States Circuit Court of Appeals, aforesaid, sitting at San Francisco, in said Circuit, for the correction of the errors complained of and herewith assigned, be allowed, and that an order be made fixing the amount of security to be given by plaintiff in error, conditioned as the law directs, and upon giving such bond as may be required, [84] that all further proceedings may be suspended until the determination of said Writ of Error by the Circuit Court of Appeals, and that a transcript of the record, proceedings and papers in said cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

(Signed) GEO. W. KORTE,  
CULLEN, LEE & MATTHEWS,  
Attorneys for Petitioner in Error.

[Endorsements]: Petition for Writ of Error. Due service of this Petition for Writ of Error admitted this 16th day of September, 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, September 20, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [85]

*In the District Court of the United States, for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Assignment of Errors.**

Now comes defendant, Chicago, Milwaukee & St. Paul Railway Company, a corporation, plaintiff in error, and makes and files this, its Assignment of Errors.

I.

The above-entitled Court erred in denying defendant's motion for a directed verdict in favor of the defendant, at the close of all of the evidence in the case, for the reason that the evidence was insufficient to support any verdict, and that there was no evidence of negligence of the defendant whatsoever.

II.

The trial Court erred in instructing the jury as follows:

“In other words, gentlemen of the jury, taking into consideration all of the testimony introduced before you, and presumptions of fact to which I have referred, if you can say that you are satisfied from a preponderance of the testimony here,

that the defendant company was negligent, plaintiff is entitled to recover, but if the jury is not satisfied of that fact by the preponderance of the testimony, your verdict must be for the defendant."

### III.

The Court erred in entering judgment upon the verdict in favor of plaintiff and against the defendant, for the reason that the evidence is insufficient to support the verdict, and that there is no evidence at all of negligence of the defendant.

(Signed) GEO. W. KORTE,  
CULLEN, LEE & MATTHEWS,  
Attorneys for Defendant. [86]

[Endorsements]: Assignment of Errors. Due service of the within Assignment of Errors admitted this 16th day of September, 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, September 20th, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [87]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Order Allowing Writ of Error.**

On this 20th day of September, A. D. 1915, comes now the defendant, the Chicago, Milwaukee & St. Paul Railway Company, by its attorneys, Geo. W. Korte and Cullen, Lee & Matthews, and having filed herein, and presented to the Court, its petition praying for the allowance of a Writ of Error to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit for the United States, accompanied with Assignment of Errors intended to be used by said Railway Company, and praying also that a transcript of the record and proceedings, and papers upon which the verdict and judgment herein were rendered, duly authenticated, may be sent to the said United States Circuit Court of Appeals, and also for an order fixing the amount of security to be given by the plaintiff in error, and that upon giving such bond as may be required, that all further proceedings may be suspended until the determination of said Writ of Error by the said United States Circuit Court of Appeals.

In consideration whereof, the Court does allow said Writ of Error, and directs that a transcript of the record, proceedings and papers upon which the verdict and judgment herein were rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that plaintiff in error give bond, according to law, in the sum of two thousand dollars (\$2,000.00), which shall operate as a supersedeas bond.

(Signed) FRANK H. RUDKIN,

Judge. [88]

[Endorsements]: Order Allowing Writ of Error. Due service of the within Order Allowing Writ of Error admitted this 16th day of September, 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, September 20. 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [89]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Writ of Error [Copy].**

United States of America,—ss.

The President of the United States, Woodrow Wilson, to the Honorable Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the District Court before you, between Sarah J. Irving, plaintiff, and Chicago, Milwaukee & St. Paul Railway Company, a corporation, defendant, a mani-

fest error has happened to the damage of the said Chicago, Milwaukee & St. Paul Railway Company, defendant, as by said complaint appears, and it being fit that the error, if any there has been, should be corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, together with this Writ, so that you have the same at the City of San Francisco, California, where the said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held. And the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein, to correct the error, what of right and according to the laws and customs of the United States, should be done. That upon giving a [90] Supersedeas Bond, as required by law, all further proceedings may be suspended until the determination of this Writ of Error.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 20th day of September, 1915.

Allowed this 20th day of September, 1915.

By (Signed) FRANK H. RUDKIN,  
United States Judge.

[Seal] Attest: (Signed) W. H. HARE,  
Clerk of the United States District Court for the  
Eastern District of Washington, Northern Division.

[Endorsements]: Writ of Error. Service of within Writ of Error admitted this 16th day of September, A. D. 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, September 20, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [91]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Stipulation as to Supersedeas Bond.**

It is hereby stipulated by and between the respective parties, that a Supersedeas Bond may be filed in the above-entitled case, in the sum of Two Thousand Dollars (\$2,000.00).

Dated this 16th day of September, A. D. 1915.

(Signed) DANSON, WILLIAMS & DANSON,  
Attorneys for Plaintiff.

GEO. W. KORTE,

CULLEN, LEE & MATTHEWS,

Attorneys for Defendant.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washing-

ton, September 20, 1915. W. H. Hare, Clerk. By  
S. M. Russell, Deputy. [92]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Chicago, Milwaukee & St. Paul Railway  
Company, a corporation, as principal, and National  
Surety Company, a corporation, as surety, are held  
and firmly bound unto Sarah J. Irving, defendant  
in error, in the full and just sum of two thousand  
dollars (\$2,000.00), to be paid to the said Sarah J.  
Irving, her attorneys, administrators, executors and  
assigns, to which payment well and truly to be made,  
we bind ourselves, our successors and assigns, jointly  
and severally by these presents.

Signed and dated this 20th day of September, 1915.

WHEREAS, lately, at a regular term of the Dis-  
trict Court of the United States for the Eastern  
District of Washington, Northern Division, sitting  
at Spokane, in said district, in a suit pending in  
said court, between the said Sarah J. Irving as

plaintiff, and said Chicago, Milwaukee & St. Paul Railway Company, as defendant, cause numbered 2062, on the Law Docket of said court, final judgment was rendered against the said Chicago, Milwaukee & St. Paul Railway Company for the sum of fifteen hundred dollars (\$1500.00), with interest thereon from the date of said judgment, to wit, the 22d day of June, 1915, and costs of suit taxed at one and 85/100 dollars, and the said Chicago, Milwaukee & St. Paul Railway Company has obtained a Writ of Error and filed a copy thereof in the clerk's office of the said court to reverse the judgment of the said court [93] in the aforesaid suit, and the Citation directed to the said Sarah J. Irving, defendant in error, citing her to be and appear before the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, to be held at the City of San Francisco, State of California, according to law, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Chicago, Milwaukee & St. Paul Railway Company shall prosecute its Writ of Error to effect, and answer all damages and costs, including the full amount of said judgment, and interest, if it fails to make its plea good, then this obligation to

be void, else to remain in full force and virtue.

(Signed) CHICAGO, MILWAUKEE & ST.  
PAUL RAILWAY CO.

By CULLEN, LEE & MATTHEWS,  
Its Attorneys.

(Signed) NATIONAL SURETY COMPANY,  
By JAMES A. BROWN,  
Res. Vice-president.

[Seal] Attest: E. F. BOOTH,  
Res. Asst. Secretary.

Approved this 20th day of September, 1915.

(Signed) FRANK H. RUDKIN,  
Judge.

[Endorsements]: Bond on Writ or Error. Service of within Bond is hereby admitted this — day of September, A. D. 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington. September 20th, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [94]

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*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Citation [Copy].**

The President of the United States to the Above-named Plaintiff, and to Danson, Williams & Danson, Your Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be held in the City of San Francisco, in the State of California, within thirty days from the date of this Writ, pursuant to a Writ of Error filed in the clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein Chicago, Milwaukee & St. Paul Railway Company, a corporation, is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Edward D. White, Justice of the Supreme Court of the United States this 20th day of September, 1915.

(Signed) FRANK H. RUDKIN,

[Seal] Attest:

Judge.

(Signed) W. H. HARE,

Clerk.

[Endorsements]: Citation. Due service of the within Citation admitted this 16th Day of September, 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washington, Sep-

tember 20, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [95]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Stipulation as to Exhibits.**

It is hereby stipulated by and between the parties hereto that an order of the Court may be entered herein, directing the exhibits in the above-entitled cause, or such of them as either party may designate, be by the clerk of said court, transmitted with the Transcript on Appeal to the United States Circuit Court of Appeals, at San Francisco, California.

Dated this 16th day of September, A. D. 1915.

(Signed) DANSON, WILLIAMS & DAN-  
SON,

Attorneys for Plaintiff.

GEO. W. KORTE,

CULLEN, LEE & MATTHEWS,

Attorneys for Defendant.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington, September 20, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [96]

*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
No. 2062.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant,

**Order to Transmit Exhibits.**

Upon stipulation of the parties hereto, which stipulation is filed with the clerk of the above-entitled court,

It is hereby ordered that the exhibits used in the trial of the above-entitled cause in the United States District Court, or such of them as either party may designate, be by the clerk of said court transmitted with the Transcript on Appeal to the United States Circuit Court of Appeals, at San Francisco, California.

Done in open court this 20th day of September, 1915.

(Signed) FRANK H. RUDKIN,  
Judge.

[Endorsements]: Order to Transmit Exhibits. Service of within Order admitted this 16th day of September, 1915. (Signed) Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court for the Eastern District of Washing-

ton, September 20, 1915. W. H. Hare, Clerk. By  
S. M. Russell, Deputy. [97]

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Divi-  
sion.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant.

**Praeceptum for Transcript of Record.**

To the Clerk of the Above-entitled Court:

You will please prepare and send to the Clerk of  
the Circuit Court of Appeals the following records,  
to wit:

Petition for Removal;

Notice of Hearing Petition for Removal;

Bond on Removal;

Order Removing to Federal Court;

Complaint;

Answer;

Reply;

Verdict of Jury;

Judgment;

Exceptions to Court's Instructions;

Petition for New Trial;

Order Denying Petition for New Trial;

2 Stipulations Extending Time for Filing and  
    Signing Bill of Exceptions;

2 Orders Extending Time for Filing and Sign-  
    ing Bill of Exceptions;

Bill of Exceptions;

Petition for Writ of Error;

Assignment of Errors;

Order Allowing Writ of Error;

Writ of Error;

Stipulation re Supersedeas Bond;

Bond on Writ of Error;

Citation;

Stipulation to Forward Exhibits;

Order to Transmit Exhibits;

Praecipe for Transcript of Record.

(Signed)    GEO. W. KORTE,

              CULLEN, LEE & MATTHEWS,

                  Attorneys for Defendant.

[Endorsements]: Praecipe for Transcript of  
Record. Filed in the U. S. District Court for the  
Eastern District of Washington, September 20, 1915.  
W. H. Hare, Clerk. By S. M. Russell, Deputy.

[Certificate of Clerk U. S. District Court to Transcript of Record, etc.]

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, a Corporation,

Defendant,

United States of America,  
Eastern District of Washington,—ss.

I, W. H. Hare, Clerk of the District Court of the United States in and for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages, are a full, true, correct and complete copy of so much of the record, papers and other proceedings in the foregoing entitled cause, as called for by the defendant and plaintiff in error in its praecipe, as the same remains of record and on file in the office of the clerk of said District Court, and that the same constitute the record on Writ of Error from the judgment of the District Court of the United States in and for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California, which Writ of Error was lodged and filed in my office on September 20th, 1915.

I further certify that I hereto attach and herewith transmit the original Writ of Error and the original Citation issued in this cause.

I further certify that I herewith transmit the original exhibits on file in said action, as follows: Defendant's Exhibit 2, being a crowbar; Defendant's Exhibit 3, being a track wrench; Defendant's Exhibit 4, being bolts; Defendant's Exhibit 5, being a [99] crowbar; Defendant's Exhibit 6, being a rail; Defendant's Exhibit 7, being an angle-bar; which original exhibits I transmit pursuant to order of this Court.

I further certify that the fees of the clerk of this court for preparing and certifying to the foregoing typewritten record amount to the sum of thirty-nine dollars and thirty-five cents (\$39.35), and that the same has been paid in full by the defendant and plaintiff in error, Chicago, Milwaukee & St. Paul Railway Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Spokane, in said District, this 29th day of September, 1915.

[Seal]

W. H. HARE,  
Clerk. [100]

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[Endorsed]: No. 2664. United States Circuit Court of Appeals for the Ninth Circuit. Chicago, Milwaukee & St. Paul Railway Company, a Corporation, Plaintiff in Error, vs. Sarah J. Irving, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the

Eastern District of Washington, Northern Division.  
Filed October 2, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 2062.

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,  
Defendant,

**Writ of Error (Original).**

United States of America,—ss.

The President of the United States, Woodrow Wil-  
son, to the Honorable Judge of the District  
Court of the United States, for the Eastern Dis-  
trict of Washington, Northern Division, Greet-  
ings:

Because in the record and proceedings, as also in  
the rendition of the Judgment of a plea, which is in  
the District Court before you, between Sarah J. Ir-  
ving, Plaintiff, and Chicago, Milwaukee & St. Paul  
Railway Company, a Corporation, defendant, a  
manifest error has happened to the damage of the  
said Chicago, Milwaukee & St. Paul Railway Com-

pany, defendant, as by said Complaint appears, and it being fit that the error, if any there has been, should be corrected and full and speedy justice be done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, together with this Writ, so that you have the same at the City of San Francisco, California, where the said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held. And the record and proceedings aforesaid being inspected, the United States *Circuit of Appeals* may cause further to be done therein, to correct the error, what of right and according to the laws and customs of the United States, should be done. That upon giving a Supersedeas Bond, as required by law, all further proceedings may be suspended until the determination of this Writ of Error.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 20 day of September, 1915.

Allowed this 20 day of September, 1915.

By FRANK H. RUDKIN,  
United States Judge.

[Seal]                      By W. H. HARE,  
Clerk of the United States District Court, for the  
Eastern District of Washington, Northern Division.

[Endorsed]: In the District Court of the United States, Eastern District of Washington, Northern Division. Sarah J. Irving, Plaintiff, vs. Chicago, Milwaukee & St. Paul Railway Company, a Corporation, Defendant. Writ of Error. Service of within Writ of Error admitted this 16th day of Sept., A. D. 1915. Danson, Williams & Danson, Attorneys for Plaintiff. Filed in the U. S. District Court, Eastern District of Washington. Sept. 20, 1915. Wm. H. Hare, Clerk. S. M. Russell, Deputy.

No. 2664. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 2, 1915. Frank D. Monekton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

SARAH J. IRVING,

Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAIL-  
WAY COMPANY, a Corporation,

Defendant.

**Citation (Original—Lodged Copy).**

The President of the United States to the Above-named Plaintiff, and to Danson, Williams & Danson, your Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be held in the

City of San Francisco, in the State of California, within thirty days from the date of this Writ, pursuant to a Writ of Error filed in the clerk's office of the United States District Court, for the Eastern District of Washington, Northern Division, wherein Chicago, Milwaukee & St. Paul Railway Company, a corporation, is the plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD D. WHITE, Justice of the Supreme Court of the United States, this 20 day of September, 1915.

(Signed) FRANK H. RUDKIN,

Judge.

[Seal] Attest:

W. H. HARE,

Clerk.

By \_\_\_\_\_,

Deputy.

[Endorsed]: No. 2062. In the United States Circuit Court of Appeals for the Ninth District. Sarah J. Irving, Plaintiff, vs. Chicago, Milwaukee & St. Paul Railway Company, a Corporation, Defendant. Citation. Due service of the within Citation admitted this 16th day of September, 1915. Danson, Williams & Danson, Attorneys for Plaintiff. Filed in U. S. District Court, Eastern District of Washington. Sep. 20, 1915. Wm. H. Hare, Clerk. S. M. Russell, Deputy.

No. 2664. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 2, 1915. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk.

